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THE FORUM

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Twenty-fourth Moot Court Competition

by Gloria M. Sodaro

The University of Baltimore Law School will be well represented in the Twenty-fourth Annual Moot Court Competition, sponsored by the Young Lawyers Committee of the New York City Bar Association.

The Law School managed to get a head start in the competition this year, employing many novel ideas in choosing its team.

The school first posted Moot Court as a regular summer elective, and in the course of the first class meeting, informed its enrollees that the national moot court representatives would ultimately be chosen from among them.

This procedure, however questionable on the surface, has worked to the law school's advantage. Under the dynamic leadership of Paul Mark Sandler, Esq., in cooperation with Dean Buddeke, a program was designed to select the three most effective competitors in the course.

As soon as the national moot court case was published, the students were allotted ten days in which to prepare a five page brief and oral argument centering on one major issue arising from the facts of the case.

The oral arguments took place in the chambers of Judge Watts, of the Supreme Bench of Baltimore City, as each awaited his turn in the adjacent jury room. Rather than arguing their contentions against one another, each student singly presented his oral argument before a panel of four distinguished attorneys from the metropolitan area. These justices included Allen Barren, Esq., who served as Chief Justice, Stewart Israelson, Esq., John Lewin, Jr., Esq., and Theodore S. Miller, Esq.

Commenting on this method of choosing the top speakers, Sandler, who has also coordinated the Appellate Advocacy course, stated that the formality of the setting in Judge Watts' chambers, the individual argumentation, and the cooperation of the four attorneys combined to provide a highly sophisticated and more accurate procedure than those employed in the past.

Steve Abrams, Tom Morrow, and Larry Ageloff preparing their brief.

Steve Abrams, Lawrence Ageloff, and Thomas C. Morrow, the latter two being evening students, were chosen as the University of Baltimore Moot Court team. Leslie Auerbach deserves an honorable mention, as his outstanding oral presentation won him fourth place in the school competition.

The moot court case involves the attempts of the Amalgamated Workers Union

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Oil and Gas Drilling Program

In Defense of The Promoter

by Michael Valadez, Esq.

The United States is in the midst of an energy crisis and the prospects for relief are slim. The center of attention in this crisis is petroleum, since in 1971 it accounted for 77% of the energy consumed in the United States. In 1975 and 2000 it will provide 75% and 54% respectively of the energy consumed in this country. The fact that by 2000 only 29.7% of our petroleum supply will come from domestic sources serves to point out the importance of any segment of the oil and gas exploration industry.

One segment of this industry, the Drilling Programs or Drilling Funds, has been highly controversial since 1969 when it suddenly expanded from the few operators who were in the industry to the numerous operators who saw a new opportunity to finance operations on a scale they never believed possible. It is this segment of the oil exploration industry which will be discussed in this article, reviewing their problems in the past, how these problems were resolved, the problems existing today and which may arise in the future. In addition, some recommendations for solution of future problems will be discussed.

It is interesting to note that it is estimated that approximately $1.5 billion is raised annually through public and private drilling programs.

Drilling Programs, as used here, means those ventures soliciting funds from the public for oil and gas exploratory activities and generally having the following characteristics:

1. The investments offered are usually limited partnership interests.

2. The investments are usually offered only to those persons having a net worth of $100,000 or more with some income taxable at a rate of 50%.

3. The investors are offered tax write-offs of up to 100% of their investment in the first year of the Program's operation.

4. The sponsor (use of this term will include the General Partner in a limited partnership, an Operator in a joint venture, and any other person performing similar functions) contributes his skills, technical knowledge, staff and bears those costs which are not deductible in the year incurred.

5. The revenues are shared on a basis related to the approximate percentage of the costs borne by the parties involved.

It is not necessary to dwell on the question of whether or not registration of the interests offered is required by the Securities Act of 1933 or any state Blue Sky Law since in only rare instances will any expanded offering of such interests be exempt from registration requirements.

The Drilling Program industry has had the sad experience of being misunderstood and, like comedian Rodney Dangerfield, is "getting no respect." To begin with, those Drilling Programs registering with the Securities and Exchange Commission (they have been doing so since the early 1950's) were required to prepare their prospectuses following the pattern set forth by Regulation C of the Securities Act of 1933. The disclosures required were designed for the offer and sale of common stock and debt securities. In addition, the Division of Corporation Finance of the SEC, which has the responsibility of examining the filings, was divided into twelve, then fifteen branches. Since new filings are assigned to the examining branches on a rotation basis, each branch did not have the opportunity to handle many of the filings and thereby become familiar with the nature of the operations. The Section of Oil and Gas of the SEC would give its comments to the branches which would incorporate them into a letter of comment to the registrant Drilling Program. Because of the branches being unfamiliar with Drilling Program operations, many times comment letters contained requests for revisions in the prospectus which conflicted with comments of the Section of Oil and Gas included in the same letter. Also, since each branch works independently of the others, there was many times a lack of consistency in the types of comments which were given to registrants.

In January 1970, the SEC adopted Securities Act Release No. 5036 which was designed to provide for specific disclosure in prospectuses under definite captions in a definite sequence. The release brought consistency to the presentation of information in prospectuses enabling prospective investors to compare the features of one Drilling Program with another. This did not solve the problem entirely, however, since there were fifteen branches at the SEC applying different interpretations to Release No. 5036. Finally, in April 1971, all oil and gas drilling and income program registrations with the SEC were brought under the Section of Oil and Gas for complete handling. While these actions have eased the disclosure burden of the Drilling Programs with the SEC, the heavy concentration of these filings in one branch has overburdened it so that the filings are generally not examined by the Section of Oil and Gas in less than sixty days.

Because of the way the Drilling Programs operate, it is easy to arouse the suspicion on the part of an examiner in a regulatory agency as to the motives of the Sponsor. For example, in a limited partnership arrangement, the Sponsor who is usually the general partner of the partnership, has the sole authority to determine which leases he will acquire for the Program, the size of the interest to be acquired in each lease, whether or not a particular lease will be drilled, sold or abandoned, how much revenue is needed for future operations and how much may be distributed to the limited partners. As a matter of law, a limited partner cannot participate in the management of the partnership or he will lose his limited liability. This type of arrangement would cause a regulatory official to desire some safeguards for the investor. It must have been with this in mind that the Central Securities Administrators Council, consisting of representatives of the States of Indiana, Michigan, Minnesota, Missouri, and Wisconsin adopted a Statement of Policy on Oil and Gas Interests in 1971. This Statement of Policy declared that any offer and sale of limited partnership or similar interests may be deemed unfair and inequitable unless the limited partners were given certain rights which included (1) the right to remove the general partner; (2) the right to amend the partnership agreement; and, (3) the right to dissolve the

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Consumer Class Action Suits Still in Infancy

Clay Stuart

In many situations in which a consumer believes he or she has been victimized by a fraudulent or deceptive business act or practice, effecting individual redress through legal action can pose difficulties. To obtain some measure of satisfaction, the aggrieved person must often rely on assistance from one or more of the following; the product manufacturer or business firm involved, Better Business Bureau, independent consumer assistance organization, Department of Consumer Affairs of the particular state or locality, Consumer Protection Division of a State Attorney General's Office, the Federal Trade Commission or the news media.

Where, however, a common method of fraud or deception has victimized thousands of consumers in the same way, the very young concept of consumer class actions could prove to be useful remedial approach in the future.

In a class action, suit is brought by one individual for himself and for others similarly situated, an approach which can offer several advantages: a) should the consumers prevail in their action, the cost of research, investigation and legal assistance is allocated among those consumers participating in the action, a benefit which circumvents an obstacle to individual action in many instances; b) in some cases preliminary hearings must be held to determine whether a class action is warranted. Despite the potential limiting effect, such a requirement also facilitates the deferral of many costs, at least until the viability of the action is determined; c) whereas a government agency has numerous cases to investigate and pursue and is confronted with a variety of problems in so doing, a particular consumer class action focuses on that one action, seemingly facilitating the efficient and expeditious handling of the effort; d) to a given firm or even an industry, the prospect of a maintainable class action can be a strong deterrent to the use of questionable practices. As the damages potentially awardable in a class action can be extraordinarily large, one such successful action can be of more preventive value for the future than any threat of intervention by a government agency.

It would be unrealistic and inaccurate to convey the impression that consumer class actions are miraculous curatives free from limitations and barriers.

Many of the legal ground rules applicable to class actions may be found in Rule 23 of the Federal Rules of Civil Procedure, some potentially limiting provisions of which are summarized in the paragraphs which follow.

To maintain a class action, there must be a question of law or fact common to the class and the class must be so numerous as to make joinder of all members impracticable; claims or related defenses of the representative parties must be typical of those applicable to the class and it must appear that the representative parties will fairly and adequately protect the interest of the class *(Fed. R. Civ. P.* 23 (a) *as amended* 383 U.S. 1031 (1966)).

In addition to the foregoing prerequisites, it must be shown that separate actions by the individual members of the class might result in varying adjudications with respect to the individuals or that adjudications in such individual actions could impair or impede the legal position of other class members not parties to such adjudications; the class action must also be shown to be superior to other forms of action available for the fair and efficient adjudication of the controversy (Rule 23 (b)).

In considering the requirements imposed by Rule 23, it should be noted that it has been held that the plaintiff in a class action bears the burden of establishing the appropriateness of class action treatment, *De Marco v. Edens,* 390 F. 2d 836 (1968); therefore when contemplating such class action, it should be ascertained that at least one member of the proposed class has a cause of action against the defendant as a matter of substantive law.

Also embodied in Rule 23 are provisions which are administrative in nature, including: a) the power of the court to determine prior to a decision of the merits, whether the action imitated will be maintained as a class action (Rule 23 (c) (7)). This can be accomplished through hearings, utilization of discovery processes, evidentiary procedings or review of briefs submitted; b) that each and every member of the class shall receive the best notice practicable in the circumstances that he will be included in the class action and subject to the judgment rendered therein unless he requests by a specified date, exclusion from the action (Rule 23 (c) (2)), i.e., the class member must "opt out"; c) that a class action shall not be dismissed or compromised without the approval of the court, and unless notice of such proposal is given to all members of the class (Rule 23 (e)).

Apart from the provisions contained in Rule 23, if diversity of citizenship does not exist between the representative plaintiff and the defendant or a federal question is not involved, to obtain Federal court jurisdiction there must be in controversy an amount of at least ten thousand ($10,000.00) dollars exclusive of interest and costs (28 U.S.C. 1331, 1332). In the case of a consumer class action, this requirement can be a major obstacle, as it has been held that even in a class action, separate and distinct claims could not be aggregated to satisfy the jurisdictional amount, *Alvarez v. Pan American Life Insurance Company,* 375 F.2d 992, 3 ALR Fed. 363, cert. den. 389 U.S. 827, 19 L.Ed 2d 82, 88 S.Ct. 74.

Although the focus herein has been on federal procedure relating to class actions, it may be noted that in Maryland, substantially similar provisions are embodied in Rule 209 of the Maryland Rules of Procedure.

Despite having potential applicability only to cases where a method of fraud or deception has affected consumers in the same way, it should be realized that the consumer class action as a concept of redress is in its infancy; for it to prove a useful form of action in the future, the feasibility of the approach must be explored in the present.

Ezra Seff: Satisfied

by Paul D. Gayle

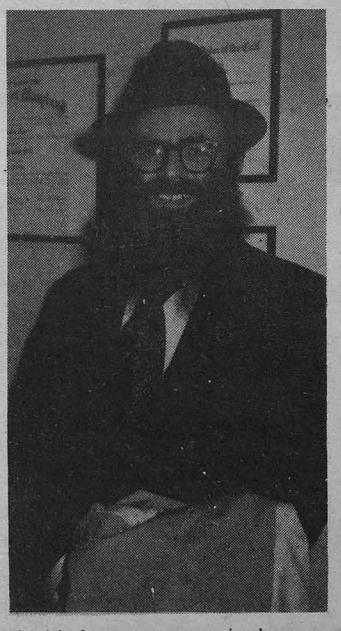
One of our law school's new professors is Ezra Seff. Although he was brought up in Jersey City, New Jersey, he has adopted Baltimore as his home and has lived here for the past fourteen years.

When asked about Baltimore, Seff said he enjoys the feeling of resurgence and regrowth that Baltimore is now generating, while simultaneously attempting to maintain what is worthwhile of the charm that exists in the older sections of town.

Seff received a B.A. degree from Ner Isreal College, an Orthodox Jewish school here in Baltimore, and a M.A. degree in education from Loyola College.

He then worked for two years as an aide and speech writer for Senator Gaylord Nelson (D., Wisconsin) in Washington.

Professor Seff feels that he now has no strong political affiliations but considers himself to be a mildly liberal Democrat. It was while he was with Senator Nelson that he



decided on a career in law.

It was with the intention of preparing to teach law that he took his L.L.B. at the University of Maryland. He presently has no desire to enter into any sort of private practice as he has always been more interested in the academic side of law.

After finishing at Maryland he worked for a year as a clerk with the late Judge Soboloff and then joined us here.

When questioned about his first impressions of our law school he indicated that it was too soon to form any accurate opinions, but that in general he was well pleased with our students and his fellow faculty.

He was somewhat surprised at our large size and expressed admiration for the diligence and perseverance of his night students who are holding full time jobs while at the same time pursuing their law studies.

Mr. Seff hopes that his experience as a law review editor at the University of Maryland will help in his position as an advisor to our review here.

He believes from what he has seen that the University of Baltimore compares favorably with other law schools and he feels that he will be well satisfied with his decision to teach here.

Shafting the Consumer

Is Fair Trade Really Fair?

by Paul Luskin

Fair Trade laws have been enacted in this state and others to enable merchants and manufacturers to contract with each other to set prices at which merchandise may be sold. The Fair Trade Act is said to have grown out of a contest of small retailers and independent wholesalers against a practice of chain stores and large department stores of cutting prices on nationally advertised products in order to attract customers with the object of selling them merchandise along with the discounted products. Manufacturers argue that price cutting detracts from the goodwill of their products and maintain that, if their products are advertised or sold at less than the retail price, the consumer would refuse to pay more than the lower price at other outlets. As a result, other retailers would have to reduce their prices to compete, and the higher overhead of some of the retailers would not allow this competition. Retailers oppose the price cutting with the argument that it results in harmful price wars and reduces the percentage of profits.

There is little doubt that such fair trade legislation has a sizable impact on consumer prices. Consumers generally oppose regulation of competition by this type of legislation because lower prices are believed to result from unfettered competition.

Paul Luskin

Pressure from manufacturers seeking to avoid price cutting from retailers marketing their goods led to the Miller-Tydings amendment in 1937, which exempts form illegality under the Sherman Anti-trust Act certain types of resale price maintenance agreements if valid under state law. The Miller Tydings act (15 USC 1) basically exempts from the anti-trust laws, resale price agreements as to the commodities which bear the trademark of the producer, is in free and open trade competition with other products of the same general class, and provided such agreements are lawful under the state law where the resale takes place. The effect of the Miller-Tydings Act "passed the buck" to the states to determine the legality of the resale agreements. Maryland held that the Fair Trade Act does not violate due process or the law of the land.

"However, the Fair Trade Act is in derogation of the general rule of the common law that any person have the right to sell his property at any price that he and the purchaser may agree upon. Therefore, the courts should accordingly construe the act strictly and should not infer that the legislature intended to change any common-law principle beyond what the act explicitedly provides," 193 Md. 544.

One of the principle issues in connection with the state fair trade laws is whether they are to be enforced only against parties who sign the agreements, or against all of the dealers as well, in order to reach merchants who acquire the goods outside the normal chain of distribution and therefore did not have to sign such agreements. Maryland holds that when a dealer is not a party to a contract under the Fair Trade Act, *"his interests are not affected by it until he elects to be bound by the contract by virtue of the act by voluntarily deciding to buy and sell the commodity on which the minimum price is fixed." (186 Md. 210)*

In 1950, the Supreme Court, to everyone's surprise, held that the Miller-Tydings Act did not cover the 'non-signer' provisions of state laws so that resale agreements were illegal if sought to be enforced against non-signing parties. (341 US 384) Congress responded by passing the McGuire Act which expressly authorized non-signer provisions if allowed under state law. Maryland stated that its 'non-signer' provisions are not in conflict with the constitutions of Maryland and of the United State. (364 F.2d 214)

"Although the non-signer provision of the Fair Trade Act conflicted with federal statutory law at the time of its enactment, where the federal law was subsequently changed to permit State enforcement against a non-signer, the supremecy clause of the Md. Constitution did not require a re-enactment of the Maryland statute to validate it and make it applicable." (209 Md. 610)

A majority of states have held that it is good only as to the signers of the fair trade agreements, in that such non-signer statutes are unconstitutional insofar as they apply, on the ground that the state police power was improperly exercised for private purposes and the statute is an unlawful delegation of legislative power to the

New dealer action spurs public interest

manufacturers.

Actually, the real effect of the fair trade laws is the allowance of anti-competitive price fixing, not the protection of the goodwill of trademarked products. Goodwill, it has been said, should be determined by the price which the goods can command in the competitive marketplace, and not by the ability of the manufacturer to set a pegged, often overvalue, and inflated price which he himself selects. Except in times of economic emergency, such inflexible and arbitrary price arrangements which the acts sanction are not in line with our traditional concepts of free competition, which have historically been the "yard-stick" of the consuming public.

The effect of the fair trade legislation is an outrageous breach of public policy and consumer welfare. A retailer having business interest to serve, may by every fair means, such as lower prices, better service, and better salesmanship, freely induce his customers and the public in general to place their faith in him. Here the interest of the public in preserving free and open competition overbalances, the marketing interest in protecting the individual business relations and guaranteed profits of larger percentages.

Recently there has been the grass-root feeling that most of the fair trade legislation should be declared unconstitutional and void an invalid use of police power for private, not public interests in that it sanctions anti-competitive price fixing and discourages free and fair competition to the detriment of the general consuming public. Indeed, in some states, the courts are taking action to void significant parts of fair trade legislation now in force. The general trend in our inflationary economy is the restriction of anti-free trade agreements and allow the products prices to follow the law of supply and demand. Fair Trade is not Free Trade, but is an abomination imposed on the consumers by the legislature, for the benefit of private manufacturing interests.

Fall Calendar

November 22, 23 (Thur and Fri)
Thanksgiving recess
December 5 (Wed)
Last day and evening of classes
December 6-9 (Thur-Sun)
Pre-examination study period
December 10-22 (Mon-Sat)
Semester examinations
December 23-Jan. 6 (Sun-Sun)
Mid-session recess
January 4 (Fri)
All grades due

FORUM EDITORIALS

Prison Reform.... or Appeasement?

Recently, a Federally funded commission made the observation that the nation's prisons and jails "have achieved only a shocking record of failure."

In their 636 page report, the National Advisory Commission on Criminal Justice Standards and Goals arrived at the conclusion that there should be an abandonment of incarceration as a method for dealing with criminals and instead, many prisons should be replaced with programs more humane and effective than incarceration.

It seems ironic that the commission, which was composed of moderate-to-conservative corrections, court, police and political officials, took two years and a $1.75 million federal grant to arrive at recommendations which have been made for decades-and some for more than a century-by who were previously labeled liberal reformers.

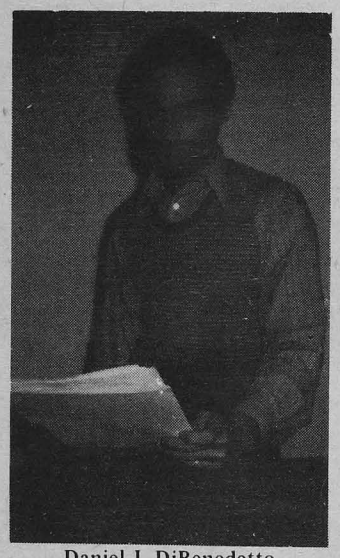
The theme of the recommendations is to get the offender out of prison and into community based programs, along with more extensive use of parole and probation, five year limits on prison terms (except in exceptional cases), and generally giving fair and humane treatment to prisoners.

What is or should be alarming is that, in a complex and highly progressive society—such as we like to think ours is, there is a need for recommendations of this nature, let alone taking two years of study and $1.75 million of taxpayer's money.

The failure of our prison system has been so obvious, in that crime has in no way been reduced since the inception of the system, that it is almost offensive to think that we are expected to accept this report and its proposals as newly learned findings revealed for the first time.

What was stated in the report should not be proposals, but instead, should exist today. Although some may feel that this is a step in the right direction -- I question whether this is a step in any direction...

According to an administrator of the Justice Department's Law Enforcement Assistance Administration, which sponsored the commission, all this report does is to provide standards which state and local governments are encouraged to adopt — so long as they are deemed appropriate and none of these recommendations are expected to be imposed on the state.



Daniel J. DiBenedetto

Of the standards recommended to the states included among others are such areas of concern as guaranteed civil rights to the inmates, guaranteed freedom of speech to prisoners, access to the courts in order to contest their imprisonment, protection against physical punishment and deprivation of normal diets, and avoiding the imprisonment of juveniles in any type of jail.

It is discouraging, or shall I say disgusting, that such basic freedoms, freedoms guaranteed by the constitution, have to be recommended to the states in an effort to encourage their consideration, instead of being imposed on the states for their adherence.

The commission best sums up the status of the prison system by saying, "Public policy during the coming decades should shift emphasis from the offender and concentrate on providing maximum protection. The prison, call it by any other name, will not. It is obsolete, cannot be reformed, should not be perpetrated through the false hope of forced treatment, and should be repudiated as useless for any purpose other than locking away persons who are too dangerous to be allowed at large in a free society."

It is our job now to see to it that these recommendations are not only considered, but that they are adopted by each and every state, along with the sponsoring federal government.

Our emphasis should not only be on the reform of the prison system, but more immediately on the reform of the society which perpetrates acceptance of such a system. Until attitudes change and understanding is attained, reform will never really be accomplished.

The need now is not to study methods of reform, in order to make recommendations to appease justice seeking citizens; the need now is to reform our own perceptions of the prison system and to implement programs, such as those mentioned in the report (along with others which have already been developed and submitted), so that finally there can be an end to the blatently unfair, inhumane and unconstitutional treatment of our fellow citizens.

Notice

The FORUM is now accepting applications for the newly created position of Evening School Editorship. The position will represent the night students on the FORUM and is responsible for obtaining materials from fellow students to be published in the newspaper. It is essential to the continued growth of the FORUM to have support from the evening students as well as their participation. Please submit your name and phone number to the FORUM office, Room 304, or call 727-6350, ext. 234.

The Quiet Revolution in Legal Ed

Using the Courtroom For a Text

Ever since the 1880's when Dean Christopher Columbus Langdell of Harvard Law School invented the "case method" of instruction, almost all law school courses have been taught the same way: For the three years of their legal training, students have read and discussed hundreds of judicial opinions, most of them from appeals courts. They were rarely urged to inquire whether the rules handed down by the Supreme Court were followed or undermined by lower tribunals, whether the protection of the law filtered down to the majority of people who could not afford lawyers, or what it felt like to play the roles and assume the responsibilities of prosecutor, defense counsel, government bureaucrat, labor negotiator or, for that matter, ambulance chaser.

Despite increasing evidence that the decisions of appellate courts were but a limited and perhaps unrepresentative aspect of the legal system, the study of law required almost no contact with the real world. Most young lawyers were admitted to the bar having never set foot in a courtroom, much less a police station, Social Security office or welfare center where government officials daily apply legal regulations to members of the public; many lawyers took the oath having never seen a pleading or a subpeona.

A Revolution

A quiet revolution in legal education is now redressing this imbalance. With one eye on the medical schools, which for two generations have included supervised diagnosis and treatment of actual patients as part of the standard curriculum law faculties have been offering clinical legal courses to their students. Over the last few years, at least 117 of the nation's 151 law schools have established clinical courses and seminars in which students receive academic credit for working in a neighborhood legal aid, prosecutor's or public defender's office, or for participating in selected cases under the direct supervision of a faculty member.

While clinical legal programs vary in the types of cases on which students work and in the client groups they serve, all combine field work, tutorial supervision, and periodic classroom analysis of strategies and student performance. In Prof. Stephen Rosenfeld's Public Interest Law Clinic at New York University Law School, students have helped to bring suits on behalf of prisoners complaining of inadequate health care and other poor facilities, subway riders demanding that noise levels be reduced, and low-income tenants threatened with eviction for their participation in a rent strike.

At Harvard, Prof. Gary Bellow's students spend at least 25 hours a week representing clients who seek the aid of neighborhood law offices for the poor, including an office run by Harvard itself; they prevent unlawful evictions and rent increases, fight consumer fraud, and sue the welfare department on behalf of clients illegally denied benefits. Recently a second-year student recovered

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FORUM STAFF

Daniel J. Di Benedetto
Editor-in-Chief

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'On Defense of the Promoter'

(Continued from page 1)

partnership and to continue the business with a substituted general partner. All contracts between the partnership and the general partner would be subject to termination by the partnership without penalty on not less than 60 days' written notice. The right to terminate contracts has been interpreted by the staffs of several members of the Council to mean that the limited partners, by a majority vote may choose to have the partnership terminate a contract. To give the limited partners this right without qualification as to the type of situation which would justify such a move (such as to protect their interests from an existing dangerous situation) raises the question of whether the limited partners are taking part in the control of the business, thus being in danger of losing their limited liability. Even assuming that it would not constitute taking part in the control of the business, it would be impractical for a group of investors who know little or nothing about oil and gas exploration operations to begin taking such actions.

The Drilling Program people weren't the only ones who were misunderstood. The regulatory agencies (SEC and Blue Sky Administrators) were besieged with Drilling Program filings in 1969, 1970, and 1971. The filings had gone from 29 filed with the SEC in 1965 to 146 in 1969, 155 in 1970 and 92 in 1971. Many registrants who were oil-oriented and knew little about securities regulation were suddenly negotiating with regulators who were securities-oriented and had little knowledge of oil and gas. JayeDyer, former President of The Oil Investment Institute related an incident in a meeting of Drilling Program people where one Sponsor's official, when told of the suitability requirements of an investor which had to be checked before a sale could be made, bitterly complained that this was "the most unconstitutional act ever enforced by a government" and stomped out of the meeting. The surge of filings, however, did cause the State Securities Administrators to seek consistent requirements and on October 7, 1971, the North American Securities Administrators Association adopted the Guidelines For The Registration of Oil and Gas Drilling Programs.

However, not every sponsor wanted his prospectus to be a copy of the language of the guideline. In addition, some Sponsors had different combinations of how revenues would be divided between itself and the limited partners as a group. These combinations involved considerable discussion with regulators and, of course, caused delays in registration, particularly so in view of the heavy volume of filings and special attention needed to be given those Programs not following the guidelines specifically. Since then efforts by the Drilling Program Industry, especially by the Oil Investment Institute, have enabled regulators and industry members to better understand each other's problems.

"Getting No Respect"

A quick look at Section 1(b) of the Oil and Gas Investment Act of 1972 which was submitted to Congress on June 14, 1972 will show that the Drilling Program industry is accused of wholesale violation of the public interest by:

1) Giving inadequate or misleading information in offering interests in the Programs;

2) Organizing and operating Programs for the benefit of the Sponsor rather than the investors;

3) Selling Program interests to persons whose financial condition was not suitable for such an investment;

4) Irresponsible management of Programs;

5) Unethical practices in establishing the method of determining the Sponsor's compensation;

6) Disposition of the Program to another Sponsor without the consent of the investors; and,

7) Operating Programs without adequate assets or reserves.

The attitude that may be inferred from Section 1(b) was one prevalent among a number of the members of the SEC staff which worked in the drafting of the legislation. This could be attributed to the frustration experienced upon learning how little an investor was told or knew of the actual operation of the Program. For example, very few prospectuses contain descriptions of the leases which the Program will acquire. In fact, the Section of Oil and Gas consistently required that the prospectus state that it had not acquired or decided which leases it would acquire as of the date of the Prospectus. If it was not possible for a registrant to make this statement, he was required to include a comprehensive description of the leases he had acquired. Normally, it is logical to expect that the Sponsor knows wich leases he will have in the Program. However, the sponsor does not know how long his registration statement will be in process at the SEC or in the individual states in which he will register. The period may extend anywhere from 90 to 180 days. This period is then followed by the sales period. It is not uncommon for a Sponsor to begin acquiring leases at the outset of all this for use by the Program, but because of the uncertain amount of time between acquisition of the leases and transferring them to a Program, he cannot reliably say which leases he now holds will go into the Program. During the waiting period production may be found on a lease adjoining the one he holds. He immediately has an obligation to the landowner to drill the lease or give it up. On the other hand, the adjoining landowner may have a dry hole drilled on his lease. This activity may make it imprudent for him to hold his lease for the Program since it becomes, absent unusual circumstances, a poor drilling risk.

The Sponsor looks for leases for use by the Program ahead of time because it may act to the detriment of the Program for him to begin looking for leases only after he has sold the issue and collected the money. This may be particularly dangerous if the Program does not begin operations until around November of the tax year. It could cause him to be imprudent in selction of leases since there would be some urgency to get the drilling done before December 31 in order for the investor to get his tax benefits.

Past and Present Problems

Internal Revenue Service. In order to be sure that investors will receive the tax benefits from an investment in oil and gas, the Partnership must be certain it will be taxable as a partnership and not as an association taxable as a corporation. Filing of limited partnership articles and complying with other provisions of the Uniform Limited Partnership Act, in itself, may not be enough. The Internal Revenue Code simply states that the term "corporation" includes an "association" without defining "association". The IRS Regulations list six major corporate characteristics which taken together distinguish the corporation from other forms of organizations. They are:

1. Associates
2. An objective to carry on business and divide the gains therefrom.
3. Continuity of life.
4. Centralization of management.
5. Liability for corporate debts limited to corporate property.
6. Free transferability of interests.

A partnership will not be classified as an association taxable as a corporation unless it has more corporate characteristics than noncorporate characteristics. In making this determination, characteristics common to corporations as well as partnerships are not considered. Essentially, what the IRS was contending was that if the General Partner was a corporation, its liability would be limited partners and the general partners had limited liability, a corporate characteristic. Since a significant number of registrants were wholly-owned, barely-capitalized subsidiaries of a larger corporation, there was some scrambling for agreements by the parent corporation to further capitalize the General Partner. These actions were necessary if the Program wanted an advance ruling from the IRS to the effect that they were going to be classified, for income tax purposes, as a partnership and not as an association taxable as a corporation. The SEC staff got a little excited about disclosing in the prospectus, as a risk factor, the fact that a General Partner did not meet the standards set up by the Safe Harbor Rule, but finally settled for asking that an opinion of counsel as to this point be filed with each oil and gas filing where a ruling had not been received by the effective date of the registration statement.

A problem of recent origin relates to no. 2 of the characteristics, that of an objective to carry on business and divide the gains therefrom which had heretofore automatically been considered as applicable to partnerships. Administratively, the IRS staff is considering as a prerequisite to being issued an advance ruling to the effect that a partnership will not be treated as an association taxable as a partnership, that the General Partner must have at least 5% interest of each item of partnership income. This creates a problem for the Sponsor since the California regulations regarding Oil and Gas Interests permit as compensation for the Sponsor either a 3/32 overriding royalty, which is generally not adequate for a Sponsor's interest; or a subordinated percentage of the working interest not exceeding 33 1/3% of the entire working interest owned by the Partnership. Since this interest does not become operative until the investors have received from production 100% of their working capital, the Sponsor does not at all times have that 5% interest from each item of partnership income. Unless the California rules change this (and their proposed rules do provide an alternative) the Sponsor cannot comply with the IRS requirement if he wants to be registered in California.

Federal Tax Proposals

On April 30, 1973, the Department of the Treasury proposed tax changes which, if enacted, would have a significant effect on the sales of interests in Drilling Programs.

The primary benefits emphasized in the sale of interests in these Programs have been the tax write-off and sheltered income from depletion. To encourage the search for and production of oil and gas, the tax law provides two basic incentives:

(1) The deduction of intangible drilling costs which usually represent about 60 to 70 percent of the cost of a productive well. If the well is dry and abandoned, the entire cost is written off against taxable income.

(2) A deduction of 22% of gross income from oil and gas as a percentage depletion allowance. This is limited, however, to 50% of net cash income.

The government thus encourages taxpayers to provide capital for oil and gas exploration by permitting him to deduct a significant portion of the cost of finding new reserves. It also allows him to keep substantially tax-free up to 22 cents of each dollar of income from oil production.

The Teasury Department said that since the intangible drilling deductions were permitted to be applied against income not related to the losses, they were "Artificial Accounting Losses". It proposed to put a limitation on these artificial accounting losses and termed it "LAL."

They explain, however, "We do not propose that any of these deductions be disallowed. Nor do we propose that they be capitalized. We propose only that if they create a loss from the activity to which they relate, that loss may be used to offset or shelter other unrelated income of the taxpayer." The Treasury proposal specifically identified Oil and Gas artificial accounting losses as those resulting from intangible drilling and development costs. The proposal would not change the depletion allowance and would continue to permit a write-off for all costs incurred for a well which is dry and abandoned.

The future of these proposals is uncertain. As of this date, no legislation has been introduced which includes these proposals. Furthermore, the Treasury Department on June 4, 1973 announced that it was withdrawing one of the proposals, that of having all proposals effective as of April 30, 1973. This effective date, understandably, caused a near panic among those Drilling Programs which were still selling units for their 1973 Programs. They could not assure their prospective purchasers that they would have the 100% or near 100% write-off if legislation passed as late as December 1973 could take this away. What's more, the SEC staff advised registrants they should sticker their prospectuses to disclose the proposals.

In view of the energy crisis and the growing tension between the Middle East countries and United States companies holding interests there, the need for stimulating domestic exploration will no doubt deter any attempt to impose drastic reductions of the present tax incentives provided for oil and gas exploration. After all, on page 9 of the Treasury's statement the Secretary says that "... 72 citizens with high adjusted gross incomes pay no federal tax." It would appear that this number would not carry much weight against arguments in favor of retaining the tax incentives in order to discover additional domestic reserves of oil and gas (except around April 15 when most anything like this will irritate the American taxpayer).

Additional Assessments

The common practice of the Drilling Program Industry of calling for additional assessments from its investors is headed for trouble. Additional assessments are called for when a Program encounters obligations which are in excess of its resources. For example, if a Program finds production on a lease, it has an obligation to the landowner to

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Student Talks About Middle East Experience

Stu Robinson, a third year student in the law school, spent the past summer working in the currently war torn Middle East for the Chief Legal Counsel to the Ministry of the Interior. Mr. Robinson was stationed in Jerusalem at the Ministry's Headquarters. The following interview was conducted with our current contributing editor about that experience.

Q. WHAT EXACTLY WAS YOUR FUNCTION WITHIN THE GOVERNMENT?

A. I was a special research assistant in the field of comparative law. I had the good fortune to be given projects in different areas which afforded me the opportunity to do independent research. This research has and will find its way into the Israeli system in the form of legislation.

Q. IS NOT THE LANGUAGE OF ISRAEL HEBREW?

A. That's correct. My work in the government called for me to work multi-lingually in Hebrew, some French, and English. I should add that with my working in the law, the technical language of these countries were often different than the spoken language. It's a good thing the Parliment Library had foreign language dictionairies.

Q. DID YOU SPECIALIZE IN ANY PARTICULAR AREA?

A. Yes. I was asked to totally redefine the Urban Planning System for the entire country. Let me briefly explain. Israel's current Urban Planning System is one of a static nature, consequently, there are many problems in trying to rapidly develop the country so as to be able to handle the growth of the population.

Q. DID YOU HAVE ANY EXPERTISE IN THAT AREA?

A. Not really, but once the project was assigned I read about the basic concepts both in our American system as well as the system of the French and the English. Just as a note, Israel's system of government is based on the English system. Necessarily, it uses structure and legislative process within it's own system. Historically, when Israel was about to become independent, in 1948, a decision had to be made as to what style of Democratic government would be adopted. At that time there were two personalities who lead the people. One was Ben Gurion the other was Theodore Herzl. Without either, Israel would not be in existance. Ben Gurion was the in state leader while Herzl was the leader in the Diaspora. Both men wanted to be President or Head of State as it were. A presidential democracy was out of the question therefore, the English system was turned to and this satisfied the needs of dual leadership. Ben Gurion was to become the Prime Minister while Herzl became the President. Both had their respective titles and Ben Gurion called the shots. Now with this bit of history let me answer in more depth. There was an incredible amount of red tape in getting building permits and working through the Bureaucracy to the actual beginning of construction. I was told by the Legal Counsel to develop a plan that would fit certain criteria for defense, while having the most made out of the ecological surroundings. After examining what was available in the planning methods in Asia and Africa, most of whom have adopted the English scheme, I looked to the town and country planning Act of England for 1972 to find concepts applicable for what was needed. The end result is what is perhaps the most recent analysis in terms of urbanization in Israel and will come before the New Session of Parliment for approval after the new elections which will be held some time in October.

Q. DO YOU SEE THIS PLAN AS APPLICABLE IN THE BALTIMORE AREA?

A. Definitely, but with certain modifications. Basically total urbanization which is affordable to the population can be accomplished by: (1) Getting a total commitment from the city. (2) Procurment of funds of the match system basis. This would necessitate a redirection of national policy to perhaps shift the weight from foreign to domestic affairs. I believe that this can be accomplished with the support of private investors and city developers who take a no-nonsense attitude. Our situation today in the area of H.E.W. is lacking due to the fact that domestic services are in the political arena. If they must remain so, then it is up to the Civic leaders to help bring urbanization to the fore. I guess what I'm trying to say is that it is time to put up or shut up, for any program will have difficulty if there is not an affirmative one hundred percent committment. Baltimore can very easily convert its urban renewal concepts into well thought out realities in terms of planned cities with full services available within the community.

Q. IF GIVEN THE CHANCE TO ATTEMPT THIS PROPOSAL OF YOUR, WOULD YOU SHOULDER THE RESPONSIBILITY?

A. Yes, gladly. I think it is time we concentrate, as has Israel, on developing our cities to their fullest extent structurally, ecologically and culturally. We have some of the most successful developers in the world in this area and they certainly could more than adequately spearhead the projects rather than the cities.

Q. WHAT OTHER GENERAL PERCEPTIONS

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Drilling Program Industry: Surviving Adjustment

(Continued from page 5)

drill enough wells on that lease to properly drain the pool of oil or gas. If it fails to do this, the landowner may recover that portion of the lease which has not been drilled. Obiously, it would be to the advantage of the Program to continue to drill a lease when it has found production so it usually chooses to go ahead and calls for additional assessments from the investors for this purpose. The SEC staff requires the Program to state in its prospectus whether or not it will have additional assessments and, if not, how it will meet its leasehold and other obligations which may arise.

The troublesome question in this practice is whether or not the call for an additional assessment is the offer and sale of a new security which must meet the registration requirements of the Securities Act of 1933. The SEC, in its civil action complaint against Geotek Resources Fund, Inc. charged "...defendants ... offered and sold securities through the levying of 'completion' assessments ... upon security holders...." It further charged "...defendants ... offered and sold securities totalling about $2,000,000 through 'development calls' made to security holders...."

Some Programs have attempted to avoid this problem by registering an estimated amount of assessments at the same time it registers the units. This raises the question of the status of the offering at the time the assessment is made since in SEC v Prudential Oil Co. the court ruled that the sale of a security is not complete until all payments required for the purchase of that security have been made. Following this reasoning, the security holder would be entitled to an updated prospectus each time an assessment is made. Presumably this prospectus should adequately describe the purpose of the assessment and entail the filing of a post-effective amendment with the SEC. This could be onerous for the Program since there is no way of telling how long it would take the prospectus to clear the SEC. In addition, the Federal Reserve Board may have something to say regarding the application of Regulation T to these assessment calls in the light of the SEC v Prudential decision.

Regulation T.

Another common practice in the Drilling Program Industry is to have the investor pay for his share of costs at the time it is needed. Obviously, a Program will not need all the money it will ultimately receive at the outset since it first must acquire leases, conduct whatever geological and geophysical work it deems necessary, and drill. If it finds that commercial production is possible on a lease, it will then need more funds to complete the wells. It should not be surprising that a high tax-bracket investor would not want to disburse his funds if he knows they may not be used immediately. Consequently, the Programs have had the practice of having payments for the security geared to the estimated schedule to be followed. The staff of the Board of Governors of the Federal Reserve System began ruling that any payment for a security in such installments would be deemed an extension of credit. Accordingly, brokers and dealers selling the interests in the Program would be deemed to be arranging for credit in violation of Section 220.7(a) of the Board of Governors' Regulation T.

The Board, on March 24, 1972, issued an interpretation of Regulation T and how it applied specifically to "tax shelter programs." The impact of the Board's ruling, however, has been diminished by administrative interpretations given to individual Programs upon application to the Board's staff. For instance, in a sample opinion freely distributed by the Board's staff, there are listed some conditions which, if met, would cause the staff to opine that the Program's installments did not constitute an extension of credit. They are:

(1) The participant's subscriptions would not be legally enforceable obligations.

(2) If the participant failed to pay any portion of his subscription, his partnership interest would be equivalent only to the amount of cash paid in and the Program could not enforce payment of the balance.

(3) If additional assessments are made, only those participants paying such assessments within seven days after notice could participate in profits and losses from the additional operations.

(4) The participant could assign, convey, transfer, mortgage, pledge or otherwise encumber only that partnership interest already paid for.

The Board's staff said that if these conditions were met, there was not an extension of credit for the installments, rather there was a continuing offer of Program interests with the interest represented by each installment constituting the offering of a new security. Payment, however, must be made within seven days of any due date.

The opinion provided a means for overcoming an obstacle which should not have applied to Drilling Programs in the first place; however, it is a little strange to have the Board's staff giving a "back door" definition of a security.

The Oil Investment Institute deciding that maybe Regulation T should not apply to Drilling Programs hired Manuel F. Cohen, former chairman of the Securities and Exchange Commission, to take the matter before the Board. The Board has not yet seen fit to exempt Drilling Program securities from Regulation T and members of the staff have proffered that one of the obstacles is the possibility of security holders being offered stock of either a new company of stock of the Sponsor in exchange for the interests in the Program. It would be logical to assume that if an interest in Drilling Programs is exempted from the provisions of Regulation T because it is not the type of security the regulation was intended to regulate (common stock or a similar security which is freely transferrable and traded) that such interest should not be convertible into common stock or a similar security. A solution to this problem could be to exempt Drilling Program interests which cannot be converted into another security within three years from purchase.

Sales Literature

One of the most troublesome areas in the past few years has been that of supplemental sales literature. Its use is authorized in Section 2(10) of the Securities Act of 1933 which defines a prospectus as "...any prospectus, notice, circular, advertisement, letter or communication, written or by radio or television, which offers any security for sale ..."; however, it goes on to say that any such communication given after the effective date of a registration statement (other than a prospectus) "...shall not be deemed a prospectus if it is proved that prior to or at the same time with communication a written prospectus meeting the requirements of ... section 10 ... was sent or given to the person to whom the communication was made..'. The section also defines the "tombstone" ads which are regulated by Rule 134.

Even though supplemental sales literature is authorized, it cannot be misleading and is subject to the antifraud provisions of Section 17(a) of the Securities Act of 1933. The House committee report of 1933 implied that the purpose of the authorization was to allow dealers, after opening negotiations with a prospective purchaser by furnishing him the required prospectus, to furnish such additional information they deemed desirable. Accordingly, it is understood in the securities industry that the prospectus is intended to be the primary selling instrument in an offering and any supplemental sales literature cannot cover any point not discussed in the prospectus.

Registrants generally have followed this practice. The problem arises from the expansion of discussion of points which are covered in the prospectus. The Commissioner of Securities of the State of Maryland eloquently described the problem like this:

"Carefully planned and packaged sales materials and sales methods that are unregistered can obscure the disclosure objectives of securities regulation, especially when the prospective investor is unsophisticated in the areas of taxation, finance, corporate management and securities investments generally. The unsophisticated investor is the one most likely to make an investment solely on the basis of presentations made through an attractive sales medium--ignoring the disclosures contained in a prospectus."

Presently there are no published rules regarding the form and content of sales literature to be used in selling securities registered under the Securities Act of 1933.

Up to now, the extent of control over sales literature exercised by the SEC Section of Oil and Gas was to request that it be sent in. Staff members would review it and advise the registrant of areas which could cause it trouble. That section usually made it clear that the literature was not "cleared" by the staff, and the lack of specific comments on other sections did not mean that they were not objectionable.

The National Association of Securities Dealers, Inc. (NASD) requires broker-dealers to submit, for review and clearance, any supplemental sales literature which it may use in the offer and sale of a security.

Seven states (Maryland, Minnesota, Mississippi, North Dakota, Tennessee, Washington and West Virginia) require that sales literature be filed for approval prior to use. A number of the states do not require filing of the material if it either meets the NASD requirements or is cleared by the NASD. Some states merely require it to be filed and some states have no requirements on submission.

In summary, there are a lot of people looking at sales literature to see if it is unobjectionable. It is logical to assume that absent some standard guidelines applied by all parties concerned, there are bound to be different requirements imposed by the different jurisdictions. It would not be surprising to a registrant to have language cleared by Minnesota deemed objectionable by West Virgina or vice-versa. Further, clearing the states is no guaranty of clearing the NASD. Another complication is that the Section of Oil and Gas is no doubt going to follow the practice now started by the other two branches in the Division of Corporation Finance in the SEC which are examining tax-shelter filings. These branches are now asking for copies of all materials relative to the offering of tax sheltered programs whether prepared to solicit evidence of interest from prospective investors or for the exclusive use of securities dealers and their personnel.

In requesting this literature the staff makes it clear that it is not to be used prior to review by the staff. Thus it may be only a matter of time until the SEC's treatment of all supplemental sales literature will evolve to the supplemental material becoming a part of the prospectus as in Investment Company prospectuses.

This would appear to be inconsistent with the intent of the Securities Act of 1933, particularly since section2(10) was specific in permitting supplemental sales literature. The liability for the content of the prospectuses and any supplemental sales literature used is solely that of the registrant and persons participating in the distribution of the securities,–not of the SEC staff. On the other hand, the preamble of the Securities Act lists one of the purposes of its enactment as "to prevent frauds in the sales thereof, and for other purposes." A review of some of the sales material which has and still is circulating will lend support to any contention that may be made by the SEC staff that review of the supplemental material is in the public interest. However, many registrants will contend that the bland nature of prospectus disclosure is the direct result of SEC staff requirements as to how certain statements should be made and that absent this "ghost writer" role by this staff, the prospectus could be the primary and only selling document.

It could be argued that the SEC should not participate too much in the examination (thereby indirectly helping write them) of prospectuses and supplemental sales literature but concentrate first on further defining guidelines and then vigorously enforcing the antifraud provisions of the Securities Act. Philosophically, this is sound but unless the SEC gets sufficiently staffed to do this, the plan just will not work. The noted Professor Louis Loss of Harvard University has been championing a form of National Securities Act which would in effect nullify all State Blue Sky Laws and make one agency responsible for all regulation of the sales of securities. Since this is not likely to occur for some time, there is some remedy needed whereby registrants may feel like they are actually preparing their own prospectus and supplemental sales material and still comply with the antifraud provisions of the Securities Act.

A feasible answer would be a summary of the offering which would be an abbreviated prospectus. It would have to be physically attached to the prospectus and every piece of supplemental material given to a prospective purchaser, whether or not it had been previously furnished him. The summary would be a question and answer form with the registrant required to print the questions as well as the answers. The questions would be couched in such a manner as to evoke the desired answer and no other. Each brief answer would give a page reference in the prospectus which would fully discuss the point. The following would be the type of summary which would be used:

EPILOGUE

The Drilling Program industry has survived a "period of adjustment" which was necessary for it to have with the

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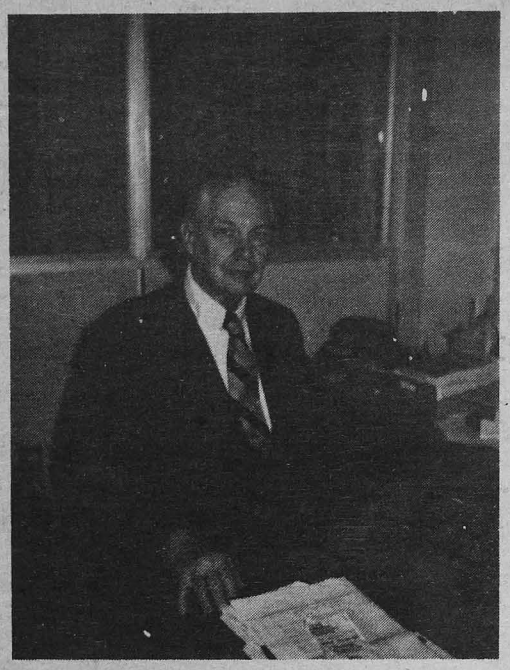
E.D. Welch: Initiating Library Projects

Edgar Donnelly Welch, Assistant Law Librarian of University of Baltimore Law School since 1 July 1973, is a



member of the State Bar of Texas and admitted to various federal courts. His degree in Librarianship was awarded by Kansas State Teachers College at Emporia, and his law degree by Southern Methodist University, Dallas.

At Baltimore his work will be mostly ordering and cataloging law books. Buying books is not easy; publishers have erratic and inefficient methods, and some law books are issued by small, obscure firms. When a book becomes "out of print," it is one of the things that money cannot buy, and locating a copy depends largely on luck, or on the generosity of a donor.

Ten years ago there was no generally accepted system for arranging a large collection of these are the two slowest moving professions, and the scheme is still largely incomplete, though an outline has been published a few details filled in.

law books, but about 1962 the Library of Congress named a committee of librarians and lawyers to devise one. Of course,

Most law librarians, even the Library of Congress itself, modify the master plan to meet local needs and customs and to fit available floor and shelf space. Nevertheless, progress is being made so that members of our mobile society may find familiar arrangements in law book collections throughout the land. Formerly most texts were shelved alphabetically: WIGMORE ON EVIDENCE and WILLISTON ON CONTRACTS were kept side by side. Now all monographs and sets dealing with Evidence are shelved together, and those on Contracts are kept together, elsewhere. Influx of new material requires frequent moving of tomes and sets.

Recently the law library staff has gratefully received volunteer help from students in the arduous task of re-shelving hundreds of weighty volumes. Bending down to the low shelves and reaching up the high ones, lifting and loading, sorting and carrying the heavy loads, men and women students have followed the energetic leadership of Ms. Gloria Sodaro and cheerfully contributed their time and efforts to aid the regular staff, who were swamped by the time-consuming demands of detail work. The volunteer helpers got plenty of physical exercise and the satisfaction of benefitting their fellow students as well as the librarians.

Recently additional shelves have been installed, and a new round of book moving lies ahead. When it is completed, all the bound volumes of law reviews and journals will be on open shelves, easily accessible to users.

Unbound copies will be kept behind the service counter. The extra shelf space where reviews formerly stood be used to facilitate classifying and cataloging all textual materials and to make new acquisitions available more quickly.

Many cartons of surplus duplicate books are being sent to the school's warehouse in order to make room for useful literature. Some duplicates may return later to the law library, perhaps to replace worn-out copies, or they may be traded for sets which are not held now.

Although he has been with our library for only three short months, Mr. Welch has initiated many projects for our library. Presently, a law-review exchange program is underway, whereby our law review will be mailed to other law schools in exchange for a free copy of their most recent law journal.

As representative of the student body and faculty, THE FORUM extends its appreciation to Mr. Welch for his present and future accomplishments in improving our library.

Obscenity Revisited

by Donald Lorelli

Isn't it curious that the very same people who are incessantly sloganeering for community control of schools, community involvement in local and state elections and community determination of the environmental quality of life have become babbling prophets of doom over the Supreme Court's ruling which will henceforth permit juries to apply community standards, rather than national standards, in determining what is pornographic in a given community?

The framers of the Constitution were concerned with political speech when adopting the First Amendment. As Justice Brennan remarked in *Roth*, "at the time of the adoption of the First Amendment, obscenity law was not as fully developed as libel law, but there is sufficiently contemporaneous evidence to show that obscenity, too, was outside the protection intended for speech and press." *Roth* thus held that obscenity is not within the area of constitutionally protected speech or press. The *Miller* decision reaffirms this and rejects the three-stage *Memoirs* test as unworkable, for national standards are "hypothetical and unascertainable."

Too many of us fail to understand the desires and motivations of others. The new Supreme Court decision on obscenity may have created a furor in the Manhattan-Washington community, but I sincerely doubt whether the rest of the nation has so reacted, for they are not as foot-loose and fancy-free as many of us here in school. As Chief Justice Burger stated in the *Paris* decision, the public has an interest "in the quality of life and the total community environment."

Some people warn of "a cultural 'lag' due to the allowance of local community standards." If progress is a culture that deems the President to be "immoral" while making a hero of Linda Lovelace, quite obviously many communities would prefer the "lag." The unconsenting public has a right to prevent whatever they deem obscene from being thrust upon themselves and their children, whether it be a film in a neighborhood theatre or Xaviera Hollander's latest next to the Tastykake's in a local grocery store. Is not a minority imposing its morality on the majority by not allowing such determination?

Some critics have countered that the concept of "obscenity" cannot be defined with sufficient specificity and clarity. But as Chief Justice Burger has stated, if we can determine when speech incites to riot or when an employer's anti-union communications become an unfair labor practice, courts can also determine what is or what is not obscene.

The tail has been wagging the dog for too long. Look around you, sloganeers. Perhaps we are now witnessing the beginning of REAL "Power to the People."

Mandel Creates New Agency

by Robert J. Lipsitz

Last Thursday at Governo Mandel's weekly press conference, the Governor created a new cabinet position, director of the Energy Policy Office who will sit on the Governor's Cabinet.

Governor Mandel appointed Mr. Richard Batterton, presently Deputy Secretary of Health and Mental Hygiene for Maryland, as the director of the Energy Policy Office for Maryland. as the director of the Energy Policy Office for Maryland.

Mr. Batterton will be responsible for the initial organization and functions of this new agency. The Governor made it clear that the staff for the agency will be composed of borrowed employees from other state agencies. The state is not going on a hiring binge to staff this new department.

One of the main functions of this agency will be to carry out the mandatory fuel allotment program that was created by the Federal Government. The Energy Policy Office will be operative immediately. However the federal government will not give the Energy Policy Office its instructions, as to how this agency will operate and all its functions, until the 29th and 30th of October giving Maryland has one day to get this new agency operating.

(Continued on page 13)

Letters to the Editor:

Student Bar Association

Dear Editor,

There are two theories concerning the official actions of publicly elected officers. The first is that they hold such office in trust for their constituency, and it is incumbent upon such officers that their official actions should reflect the will and desires of that constituency. The second theory is that the popular election of the officer is a mandate to that officer to use his own judgement and discretion in official matters.

Assuming the officer ascribes to the first (and to me, more desireable) theory, as a practical matter it is impossible for even the most concientious officer with a constituency of even 5 people, to be aware of their feelings on each and every issue which may arise in the operation of a vital and active organization. There are occasions when he must use his own judgement; but that judgement should be tempered by whatever knowledge he possesses of the generally expressed desired and aims of his constituency.

For an organization to remain relevant to its members and to the functions and goals for which it was created, it is imperative that there be a continuous and meaningful communication between the general membership and the officers of the organization. Both of the Student Bar Associations at the University of Baltimore have failed to establish this vital communication.

This failure is not for want of attempts. The E.S.B.A. and S.B.A. conducted polls at the end of last year to determine the directions the organizations should take this year. The most frequently requested activity (aside from weekly wrestling matches in the law lounge with hostesses from "Les Gals") was an improved speakers program with more speakers at a convienient time. Such a program has been put into effect; however when the first speaker, Judge Rita Davidson, the newest member of the Maryland Court of Special Appeals, spoke on a Sunday at 7:00 in the evening, there were only 25 people to hear her. That is 25 people from a student body of nearly 1,000 law students.

Another request was for a place to sell used books at reasonable prices. In response, the student run used-book store was established. This store not only provides a place for purchase and sale of used books, but also sells Gilbert and other materials at a discount. The used book store is thus far a successful venture; however student complaints about its odd hours are symptomatic of the lack of student support as demonstrated by the lack of volunteers to keep the store open longer hours.

The S.B.A. - E.S.B.A. sponsored Moot Court and job placement programs are both highly successful and student response in terms of participation has been excellent; but here too there is a need for volunteers to help manage and administer these programs.

A large portion of the student body in the previously mentioned polls indicated that they wanted a fuller calendar of social events. I will not at this time dwell on the overwhelming lack of response to the "Bar B-Q" which forced its cancelation. I can only say that this is a prime example of a failure to communicate on the part of the officers of the Student Bar Associations in terms of advance notice of the event or on the part of the general membership in the afore-mentioned polls.

It is my belief that this failure in communication stems in great part from a lack of understanding by most law students at the University of Baltimore (though certainly not at most other law schools) of the functions, activities and powers of the Student Bar Associations.

The Student Bar Associations through their executive councils *appoint* the Honor Court Justices. These positions are not elected. Many law students may not be aware that the Honor Court has the power to recommend official repremand, schoolastic probation, or even expulsion for violations of the Honor Code. Records of Honor Court decisions can become a part of a student's permanent record, and I am not aware of any case in which the Honor Court's official recommendation was not accepted.

As mentioned above, the Student Bar Associations sponsor and run Moot Court, participation in which is noted on the student's schoolastic record. The student administrators of this program get free academic credit and are *appointed* by the Student Bar Associations.

The faculty and school administration look to the two Student Bar Associations as organs for student expressions of approval or disapproval of various academic programs and methods, as well as for student suggestions and innovations. The most effective method for a student to communicate to the faculty and administration in these areas has been and continues to be through his Student Bar Association.

The Law Day program which can attract local and national attention to a school's activities is sponsored, planned and run by the Student Bar Associations.

These activities do not constitute even half of the many programs administered by the Student Bar Associations, but I think they are sufficient to demonstrate the need for these organizations and the importance of their remaining strong and active.

This letter is not meant to be a plea for students to pay dues and show financial support to the S.B.A. or E.S.B.A. (though they are *most welcome* to do so). It is rather to urge participation in and communication about those programs which may have a lasting affect on a law student's schoolastic and even his professional career.

David S. Harvis
Vice President
Evening Student Bar Association

Registration Revised

Registration procedures for Spring 1974 will be handled Nov. 3 and 17, Dec. 1, and Jan. 5, from 8 - 12 a.m. and 2 - 5 p.m. in room 404 of Charles Hall.

In an effort to alleviate long lines and priority lists, both of which confronted law students in the past, registration is going to be processed in order of priority by the number of credits each student has accumulated by the end of this semester.

The registration forms will arrive color-coded, red or Priority I for those with more than 60 credits, blue or Priority II for those with 31 to 59 credits, and yellow or Priority III for all remaining students.

No matter how the registration forms are received, by envelope, mail, or by another student (it is not necessary to register in person), they will be processed in order of priority on the following days; Priority I--Nov. 3-10, Priority II--Nov. 17-24, and Priority III--Dec. 1-8.

The only people required to register in person are beginning law students and day students wishing to take the evening section of a course which is offered in the day--unless it is a continuing course in which they were enrolled in the Fall evening section.

Dean Curtis and Associate Dean Buddeke will be available on Nov. 3 and 17, Dec. 1 and Jan. 5 for those students with special problems.

After the above process is completed, registration will be considered tentative. Payment or other arrangements for payment must be made on or before Dec. 21 or the tentative registration will be cancelled and the space will be released to other students.

A point of special interest to night students is that there will no longer be Friday evening classes, all classes will be held Monday-Thursday evenings.

Supreme Court Notes:

More Overheard Conversations

The Court's October 15 decision to affirm the denial of bail to a defendant, charged with comtempt for refusal to testify before a Chicago grand jury, was dominated by a raging 7-page dissent by Justice Douglas. The Justice alleged, inter alia, that the Court's deliberations themselves were not exempt from bugging, saying, "I am indeed morally certain that the conference room of this Court has been bugged."

The case involved a 30-year old alleged activist, imprisoned four months to date for her unwillingness to discuss her knowledge of various thefts from Illinois draft boards. Petitioner claimed that, not only had federal agents tapped her telephone, but that of her lawyers as well. Interestingly, the Government apparently did not explicity deny her charges about eavesdropping on her counsel, although agents did deny listening on the petitioners phone conversations. Nevertheless, the Court majority declined to order the setting of bail for the defendant, affirming her incarceration until the grand jury adjourns in December.

Douglas alleged that Lyndon Johnson, while President, had "asserted" to him that his own executive phones were tapped, refusing to comment further his charge, apparently unprecedented in the context of a Court opinion, met with rapid responses from former Attorney General Katzenbach and Joseph Califano, former Johnson aide. Katzenbach labeled the allegations "highly unlikely" in light of Secret Service procedures for electronic sweeping of the White House to prevent such practices. Califano, while recalling Johnson's public distrust of wiretapping, said the President had never intimated this specific concern to him.

President Johnson issued blanket order in 1965 forbidding wiretapping except in "national security matters" -- that shadowy area which, with the increase of violent dissent to his Vietnam politics in the following seven years, clearly embraced a broad range of alleged domestic subversives. In 1969, Johnson, apparently with some misgivings about the likelihood of the compromise of civil liberties, signed the Omnibus Safe Streets Act.

Douglas noted Johnson's apprehension, as expressed in his accompanying message: "If we are not very careful and cautious, these legislative provisions could result in producing a nation of snoopers bending through the keyholes of the homes and offices in America, spying on our neighbours. No conversation in the sanctity of the bedroom or relayed over a copper telephone wire would be free of eavesdropping by those who say they want to ferret out 'crime".

In 1967, the Court had struck down a New York statute for the issuance of ex parte orders for bugging as unconstitutionally broad. *Burger v. New York* declined to address appellant's claim that the law permitted a system of trespassery surveillance, authorizing "general searchs for mere evidence", since the sweep of the statutory language was sufficient to dispose of the law. Owing, perhaps, to the more careful attention to drafting, the Omnibus Act has not been seriously challenged on its face--although, arguable, the Act encourages abuses of overzealous administrations similar to those urged upon the Court by Burger.

The public is left to ponder the chilling effect of the Justice's allegations on the private conversations of the high court. A certain historical irony emerges from Brandeis' dissent in *Olmstead* in 1928, a minority opinion which later found favour with the Court: "In a government of laws, existence of the Government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher...To declare that in the administration of the criminal law the end justifies the means.. would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Middle East

(Continued from page 6)

ABOUT ISREAL DO YOU HAVE?

A. The people were friendly, though all very much politically concerned for obvious reasons. Surprisingly enough, the reaction to Watergate et al was not one of disbelief, but fear. The Nixon Administration has been extremely helpful to Israel in terms of supplying weapons as well as industry both in imports and exports. The country was aware of their problems, which compounded with the fuel oil as the new key to the balance of power in the Mid East and Israel's survival.

Editor's Note: Stu's internship in Israel was the first international one offered by the law school. In the next issue of the Forum he plans a political analysis of the current crises as it developed this summer and the effect of the oil situation on this crisis.

Foreign Investment

Sir:

The two recent articles by John Cuniff in the Baltimore Evening Sun of September 27 & 28 concerning foreigners buying U.S. firms raise many more questions than they answered. The major question raised and unanswered, is, what should presently be done concerning foreign direct investment in the American economy.

The answer is that both federal and state agencies ought to be established in order to monitor and to provide guidelines concerning foreign ownership. This would be preventive action against a basically unknown precedent in the United States.

Foreign acquisitions may very well help benefit in the short-run both the national and local economies. In this belief, many states, including New York, Virginia and Maryland, have attempted to attract such investments by their "embassies" in Brussels. But the total implications of foreign ownership are not clear.

The viability of multinational corporations is currently being studied by many governmental and non-governmental agencies, both American and foreign. Studies are being undertaken by the European Common Market, various Congressional committees, various European governments and political parties and the United Nations.

While neither existing studies nor traditional international economic theory provide any specific answers, the situation demands some immediate steps. The action required is the establishment of at least state agencies to monitor and to establish guideline concerning foreign owned firms. Legislation establishing such agencies is considered as only temporary pending more definitive information. Such agencies could be newly established entities or established within existing authorities, such as those governing the operations of the world trade centers.

Foreign countries, such as France, have legislation treating as a separate entities the foreign corporation or the foreign dominated corporation. Such legislation was the response to the "Le Americain defi." At the minimum and at this point in time, comparable legislation is required in the United States.

STUART S. MALAWER
professor of International Law, University of Baltimore, School of Law.

Moot Court

(Continued from page 1)

to build a low income housing development and have it furnished with access to the water supply and sewage systems by the Incorporated Village of Bucolia. Representing this wealthy community, the Village Council denied the Union access to these utilities, on the basis of a report from an environmental consultant firm recommending that Bucolia not tax its systems any further. The report warned that additional development would possibly result in pollution of the nearby lake and beaches, and exhaustion of the existing water supply. This in turn could cause the village to breach its agreement to provide a nearby enterprise, Collosal Ecstatic International, Ltd., a prestigious multinational corporation, with its future demands for expended water and sewage needs.

In a suit brought by the Union on behalf of its members, whereby the Union charged the village with violations of the 14th Amendment of the Civil Rights Acts of 1866 and 1871 and the Fair Housing Act of 1968, the trial court found for the defendant Bucolia. Bucolia has since petitioned and been granted by the Supreme Court a writ of certiorari to the Court of Appeals, and it is now ordered that the cause be argued in the October 1973 term of the Supreme Court.

The moot court team has been working weekdays until 11:00 p.m. and Sundays since August 25th to prepare a brief for one side of this argument. Submission of this brief, however, does not guarantee that the team will be asked to argue this side of the issues. They must be equally prepared to present the opposite party's contentions.

The team has just completed its brief with some direction from Sandler, who won the regional moot court competition for this region in 1966 as a member of his Georgetown Law Center team. The team is limited in its consultations with Sandler, so as to comply with the National Rule that "no team shall receive any assistance in the writing of its brief or the preparation of its oral argument," with the exception of a "general discussion of the issues....(and) general critiques on argument, provided that such critiques are not designed to change the substance of the contestants' brief or argument."

Last year the University of Baltimore entered National Moot Court Competition for the first time, and merited third place, while those ranking in the first two places went on to the final rounds in New York.

On behalf of the Law School student body and faculty, the *Forum* extends its support and confidence to the team of Abrams, Ageloff, and Morrow.

OUR MAN IN ANNAPOLIS

by Allan Cecil

On Thursday Oct. 13 House of Delegates' Speaker Thomas Hunter Lowe was elevated to the position of Associate Judge of the Court of Special Appeals. At brief swearing in ceremonies held at the State House the neophyte judge and the Governor exchanged quips with one another about their legislative careers.

Present also were several hopefuls for the now vacant Speaker's position. Among the hopefuls present at the ceremony were two prominent delegates who by the latest thumbnail vote are the top contenders. Both are Law School Graduates of the University of Baltimore and have distinguished themselves in the Legislature. Young by legislative standards, both have attained leadership positions under the retired Speaker.

John Arnick of the 7th. Legislative District of Baltimore County has been the Majority Leader and Chairman of the Environmental Matters Committee. He has enjoyed a reputation for energetic representation of his constituents and sponsorship of many new ecological laws. Arnick's committee was first to pass the newly enacted Natural Resources Law.

John Hanson Briscoe proudly hails from the "Mother County" and has earned the respect of many legislators with his business accument in chairing the Ways and Means Committee. It is through this committee that all budget requests must move for final approval before the tally is taken in the House. Briscoe is admired and has, on occasion, been nominated for a circuit court judgeship. Last Spring the bill that will make the University of Baltimore a state university was skillfully moved through the House by Chairman Briscoe and Vice Chairman Ben Cardin.

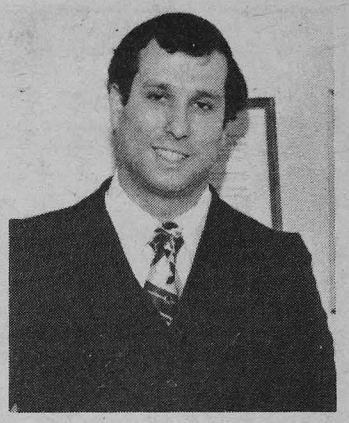
Before another month passes, Governor Mandel will convene the second special session of the year in order that the House of Delegates may pick its new Speaker. Other hopefuls include Delegates Kyrsiack, Becker, Weidemeyer, and Grumbacher.

Book Review

International Peace Court Move From State Crime Toward World Law

Hague: Martinus Hyhoff, 1970

"The present work proceeds from the conviction that our knowledge of law, meaning the whole legal process, painfully developed through centuries of trial and error and review, should be applied to the solution of the most serious problem confronting modern man - international violence".



Professor Malawer

This study proposes a legal breakthrough of subjecting State military action to the jurisdiction and review of an International Peace Court.

The author proposes the establishment of an International Peace Court as a viable means of channeling world public opinion towards this realistic objective. He considers law as relevant to policy formulation and as a determinative factor in decision-making. The establishment of the International Peace Court is a means of achieving a less violent world public order.

The author's insight of establishing an international court absent state consent, but based on consensus, is very realistic and timely. The movement away from an extreme positivist concept of obligation based on consent, is evidenced by the adoption of the concept of *jus cogens* in Article 52 of the 1969 Vienna Convention of the Law of Treaties. The definition of aggression and self-defense has been much discussed by a General Assembly's special committee. The Court can assume an active role in further defining these terms in the context of both civil strife and inter-nation wars. The Court is a result of measured optimism and is a needed legal mechanism.

Critics often chastize the fragility of moral censure; the author implicitly chastizes the critics. The work is of first-rate legal scholarship and creativity.

It weds law to policy in a very relevant manner. It escapes the all too prevailent legalism the law professors lapse into at the expense of policy analysis and creativity. This work is meaningful to the law student and the lawyer; the practitioner and the academic; the social scientist and the legal scholar.

Drilling Programs

(Continued from page 7)

regulatory agencies so that they could understand each other. It has done this without having to compromise many of its principles. There is no doubt that it has gained the confidence of investors as is evidenced by the fact that $899,530,000 of interests were registered by Drilling Programs during the fiscal year ended June 30, 1973.

This is only part of what is necessary for it to survive. It will face such obstacles as avoiding being a victim of the scramble for control of domestic petroleum as the Middle East is gradually closed to American interests; the annual clamor for tax reform which may cause the Major oil companies to seek a suitable "sacrifice" offering to satisfy the public; and, the possibility of governmental regulation of all exploration activities in the event the public is convinced of its necessity, in which case survival will be largely a political decision.

This industry has not yet concentrated on the area of public relations which would do much to avoid these obstacles. It needs to let the public know what its contribution to the general welfare has been in terms of (1) how much energy is supplied by this industry; (2) how much the economy is stimulated in the areas of its operations; and, (3) their concern for environment especially in view of the near-crisis attitude prevailing today. Unless some attention is directed to these areas the Drilling Programs will, by default, be gradually phased out as a significant segment of the oil and gas industry.

Editor's Note.

Michael Valadex
Member of the Maryland Bar
Formerly a member of the staff of the Section of Oil and Gas-Securities and Exchange Commission.

If there are any questions from our readers, author's address will be furnished for direct communication by contacting Forum Office.

Discussion Session to be Held for Freshmen

Dear Fellow Evening Students:

I would like to begin this letter with an announcement to the freshman class. On November 6, 1973, at 9:30 P.M. in Room 318 of Charles Hall, the ESBA will hold a question and answer session on upcoming exams. Two members of the Law Review staff will be present to answer questions. The format of the session will be a presentation of a question and proposed answer in the areas of torts and contracts. Hand-outs of questions and answers will be available at the session, and all extra copies will be placed in the SBA office for those of you who cannot attend the session. This will be a one-time-only session, so please try to attend if you can.

The second area which I would like to touch upon concerns the library. Numerous comments have been made to me concerning the problem of noise in the library. It must be apparent to all persons in this school that no one benefits when people are socializing in the library. I find it hard to believe that it is necessary for me to have to address myself to this topic, but apparently I must. Please have the decency and intelligence to realize that there **are** people in the library who wish to study, and prefer quiet. If you wish to carry on a social conversation, go into the lounge on the 4th floor or go out into the hall. If you must talk, then please use a lower tone of voice. Please, use a little common sense. If it were the other guy sitting next to you who was carrying on a rather loud conversation, how would you feel? Well, that's how he feels about you.

The student used-book store is pleased that many students came to the book store to both sell and buy used books. However, we do have many books still in the book store, but unfortunately, the majority of these are not being used in this school at this time. Therefore, unless the book you placed for sale is for a course being offered second semester, please make arrangements to reclaim your book. The store wishes to purge itself of "deadwood," in an effort to prepare for second semester's books. If you have a text for a second semester course and you wish to sell it, please bring it in now. This will enable the store to stock up now so that when the book list for second semester is available, your book will be there for much quicker sale. Before you rush to the school book store, come up and check our place, we may have a used book for your course. Unfortunately, there are a few books in our present stock, which although currently in use, were not sold.

The ESBA, together with the SBA, will be offering a movie series to its members. These will include "Anatomy of a Murder" and "The Poppy is Also a Flower". Other films will be offered also. Admission will be free to members of either organization and non-members will be charged a fee. Also a speaker will be scheduled for either late October or early November.

As you may or may not know by now, the BAR-B-Q scheduled for October 14, 1973 has been cancelled. A total sale of 200 tickets was necessary to reach the "break-even point" but unfortunately our sales fell far short of this. Several students felt that I threatened or harassed them in an attempt to sell tickets. To those I apologize but my side of the story is that at the time, I had had nothing

(Continued on page 15)

In Search of Oil: A Critical Situation

by Jennifer Bodine

There can be no doubt in anyone's mind that the United States is eyeball to eyeball with an impending energy crisis. Hostilities in the mideast and the recent Arabian threat to cease United States oil sales, if she does not stop selling equipment to the Israeli military, can only serve to prove that without a constant and reliable flow of energy resources, we as a nation will probably come to a grinding halt. In view of this, it seems only sensible that we should stop directing all of our talents into finding new sources of the old commodity and look elsewhere for new sources of energy.

Another weighty problem the United States has to contend with is refuse disposal. Garbage disposal is the nation's third highest municipal expense, after schools and roads. The wastes produced in the United States total over 4.3 billion tons a year. Two hundred million Americans generate over 360 billion pounds of municipal waste yearly. That is enough trash to fill 5 million large tractor trailors. stretching around the world twice, if placed end to end. One hundred and ninety million tons of garbage, or 5.3 pounds per person per day are picked up and hauled off for disposal at a price of $4.5 billion dollars yearly. This figures is expected to double within the next fifteen years.

And finally, where the garbage ends up is another crisis facing this country. Dumps have proven to be ecological disasters and municipal incinerators are considered obsolete in terms of today's needs and standards. A recent survey has shown that less than 6% of the 12,000 landfill sites meet the most minimum of federal standards for sanitary landfill, and furthermore, state and local governments are rapidly running out of disposal space. The following list, published by Anheuser-Busch, Inc., shows usage of disposal methods by proportion to solid waste weight processed. Dumps, 84.6%; sanitary landfill, 5.4%; incineration, 8.0%; other, 2.0%.

Viewing the aforementioned problems, it seems that with a bit of imagination and daring, the three problems could be mutally intertwined into a solution superior to anything else commonly at hand. Why couldn't garbage be converted into energy? Massive volumes of waste could be recovered; disposal locations after collection would be alleviated; and pressure for more fuel would be lessened in the petroleum industry, if another source of energy could be tapped. Garbage could and would not universally replace the present fuels, but several municipal areas have already demonstrated that energy recovery through the burning of solid waste producing heat and power is most readily available and conducive to widespread use.

Last year, the Union Electric Company of St. Louis burned municipal solid waste as fuel for the direct production of electric power. It saved 14 million pounds of coal by using garbage to produce electricity. Next year, Nashville, Tennessee will heat and cool 27 downtown buildings daily with the steam from 720 tons of cooked garbage. As mentioned before, garbage will not replace oil or coal — if all the trash in the United States were burned, approximately 25% of all our energy needs would be supplied — but no one can doubt that such incineration - combustion would go a long way towards killing several birds with one stone.

Appeal For Action

Considering the turmoil surrounding current domestic political events, it is quite understandable if the American Public seems somewhat confused and agitated by the continuing saga of Watergate, especially after the most recent events of the firing of the Special Prosecutor and the President's reversal of his position concerning the tapes. Unfortunately, we are afraid that the suspicion and distrust which now loom so ominously over the Presidency cannot be alleviated by the mere release of the tapes. At the very least, lingering doubts will remain for a substantial number of citizens as to the veracity of the evidence produced through the tapes, and the questions of personal impropriety by the President will remain unanswered because of the dismissal of Special Prosecutor Cox.

Perhaps these suspicions are unfair to the President, but the insinuations and innuendoes are real enough whether they are groundless or not, and it is not accurate to attribute this doubt and suspicion solely to avowed Nixon-haters. A very substantial number of persons, many of whom have, in the past, been the President's supporters, are now unsure of his actions and motivations. Thus his ability to lead this nation has been greatly eroded at a time when strong, effective executive leadership in domestic as well as foreign affairs is necessary. The numerous resignations, prosecutions, and investigations have indeed sorely touched the Office of the President. If we are to look to the future productively, the political situation both past and present – which are too much troubled by the sordid details of scandal, must be placed in perspective.

To accomplish this and restore the Presidency to a position about suspicion of wrongdoing, all questions concerning Watergate and the Cox investigations must receive full, fair, and impartial inquiry from Congress. The Office of the President must be cleansed of the taint of suspicion and scandal. It is for this reason that The Forum urges all of its readers to write to their Congressmen in support of such investigation and impeachment, if necessary, so that the integrity and credibility of the Presidency can be restored with finality. To continue on our present course will serve noother purpose than to perpetuate distrust and divisiveness among the people of this nation and to allow this would be a great disservice to ourselves and our future.

Where to contact delegates:

For those interested in contacting their delegates in Washington -

Letters to Senator Charles McC. Mathias, Jr., and Senator J. Glenn Beall, Jr., should be addressed c/o United States Senate, Washington, D.C. 20510. Their Washington and Baltimore telephone numbers are: Senator Mathias, 202-225-4654 and 962-4850; Senator Beall, 202-225-4524 and 962-3920.

The mailing address for all eight representatives is c/o House Office Building, Washington, D.C. 20515. Following are their telephone numbers.

ROBERT E. BAUMAN (R., 1st); 202-225-5311; Easton 822-4300

CLARENCE D. LONG (D., 2d); 225-3061; Towson 828-6616

PAUL S. SARBANES (D., 3d); 225-4016, Baltimore 962-4436

MARJORIE S. HOLT (R., 4th); 225-8090; Glen Burnie 261-2008

LAWRENCE J. HOGAN (R., 5th); 225-4131; Landover 763-7480

GOODLOE E. BYRON (D., 6th); 225-2721; Hagerstown 797-6043

PARREN J. MITCHELL (D., 7th); 225-4741; Baltimore 962-3223

GILBERT GUDE (R., 8th); 225-5341; Kensington 443-6180

U.S. President v. Congress

(As seen by the late Mark Twain)

by Michael B. Hare

I just happened to be floating by (I was never much of a believer but I'd been wrong before) when I came upon a most unusual entertainment. It seems as though some of the boys in Congress got a might upset at the President the other day and decided they'd take him on for good. Like as not, they had nothing better to do anyways. Well sir, they'd built themselves a prize-ring and challenged the man to fight. Sure enough, he'd accepted the challenge and showed up ready for work.

He'd brought along a whole flock of trainers and seconds neatly trimmed, modishly styled gentlemen (I was always partial to the slightly rumpled look myself, but there's no accountin' for tastes). Well, they all flocked around him, givin' advice and such, layin' down the odds as it were. He had the damndest waterboy, however. Some fellow named Gerald who kept up a steady chant in support of his man, but not offerin' much advice. Looked like a newcomer to me.

While this activity was goin' on, the other corner of the ring was a mess. All these Congressmen were pushin' and shovin' each other out of the way and tryin' mightily to climb into the ring, but they just couldn't seem to decide who was to do what to whom. (It's nice to know some things, like politicians, just don't change – I suppose.) Finally, some of those more finely tuned in the art of filibuster, talked their way to the fore. They were a distinctly odd bunch (but then, aren't they all?). About half dozen of these fellows, led by some elderly gentleman (who'd periodically wave his finger at them, gesterin' and lecturin' profusely) decided they'd supply the antagonism.

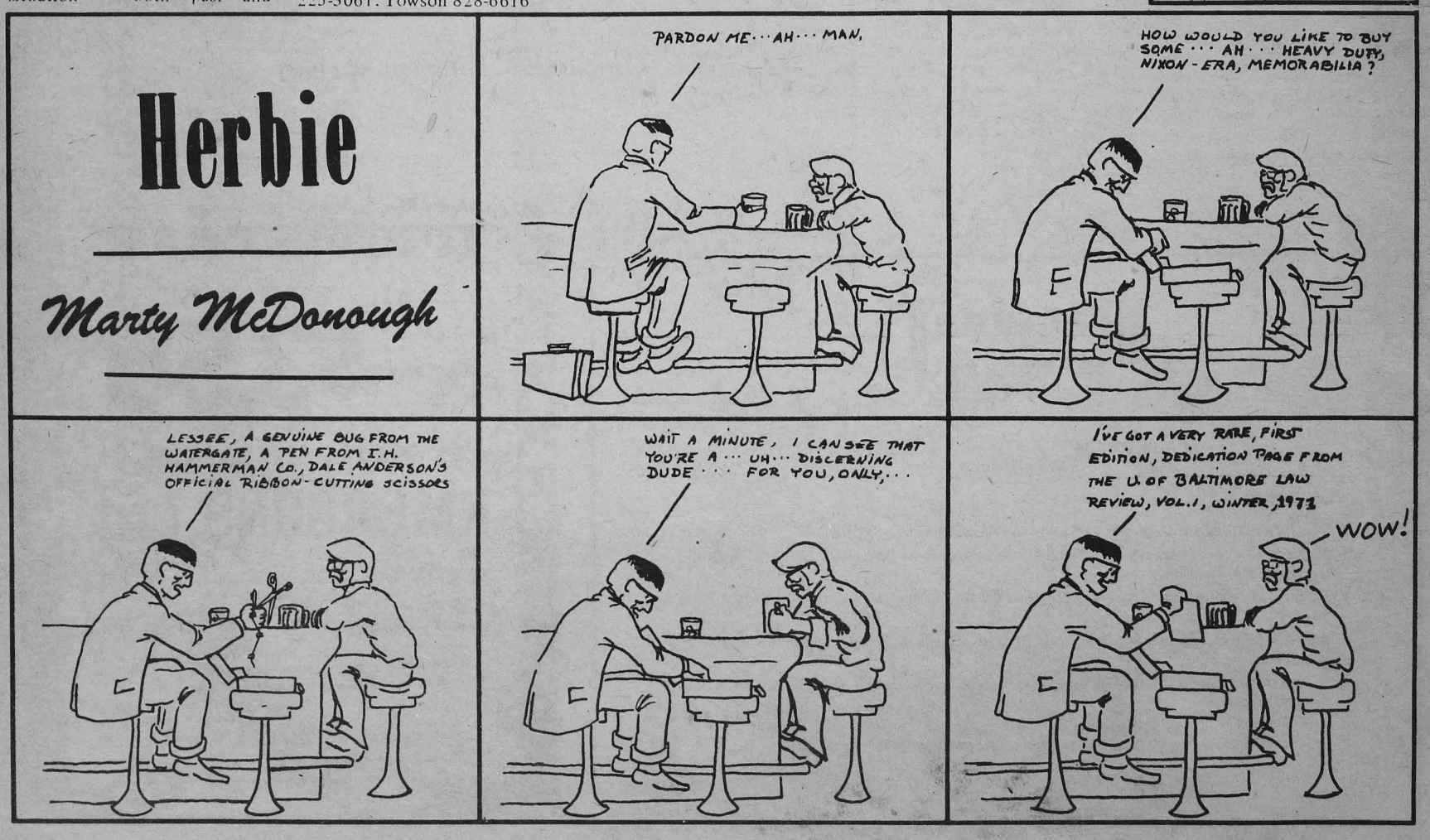
No sooner had the bell sounded, than this President fellow rushed to the center of the ring, bedazzlin' all with a display of footwork that would've put Lola Montez to shame. The Congressmen, of course, went into conference to see who'd lead the way. Sure enough they sent the youngest out first and then by and by, the rest followed. Well the first thing that President fellow did was stick his chin out 'bout as far as it'd go, and sure enough the Congressmen started to haul off to hit him on it when they stopped to argue over how far back to draw their fists. Now the President he just smiled. By and by the Congressmen decided on how far back to draw their fists and stepped back up to the President who was still standin' there with his chin stuck all the way out and this grin on his face. Well, about this time three of the Congressmen decided that they'd forgotten to do somethin' somewhere and left, but the youngest, why he laid back and swung just as hard as he could. 'Course he missed because just as quick as he'd stuck his chin out, the President pulled it back in, turn right smartly and reverse his field. (First smart thing he'd done, I'd thought.) The Congressman, he fell flat.

Well, I won't bore you with the rest of the fight, I hear its still goin' on, but I'd seen enough to know I didn't miss earth too much. I think I'll just float around for another fifty years or so then drop by again to see if Man (who, I might've previously mentioned, was of the lowest rank of all animals) has gotten any smarter. I'll tell you this, if I was a bettin' man, I'd lay 8 to 5 on the President ....

Faculty participation

Herbie

Marty McDonough



Lecture Topic

'Post Conviction Procedures'

by Carol Murray

"Post Conviction Procedures" was the topic of a panel discussion held in the Langsdale Auditorium on Tuesday, October 2, 1973.

Participating in the discussion were Edward Ranier and Edwin Wenck Assistant State's Attorneys for Baltimore City, as well as Dennis Henderson and David Ellis, Public Defenders for Baltimore City.

Mr. Wenck, a recent graduate of the University of Baltimore Law School led the discussion by stating that his experience in the State's Attorney's Office had made him aware of the criminal procedure that he did not learn while in law school, and that such a panel would be helpful to the law student's understanding of the criminal and post conviction procedures.

Public Defenders David Ellis and Dennis Henderson. State's Attorneys Edward Ranier and Edwin Wenck.

According to Mr. Ranier, in 1972, the State's Attorney's Office prevailed in 96 percent of the post-conviction petitions filed. Mr. Ellis pointed out that a large number of the petitions were initially without merit and the petitioners were advised to withdraw. It was agreed that the reason for this is a basic misunderstanding of the post conviction procedures statute. Mr. Henderson emphasized that as a matter of practice courts will not hear a post conviction petition while an appeal on the case is pending and that post conviction petitions will not provide a remedy where a remedy already exists, for example if the issue can be raised on appeal. Insufficiency of evidence is never a ground for post conviction relief and must be raised on appeal. The post conviction procedure statute's aim is to catch the case where a person has been cheated or denied a fair trial. Mr. Henderson stated his belief that this was an unusual case and that in most cases "the attorney will do all that he is supposed to do."

Post conviction petitions are generally based on those things that don't show up in a transcript of the trial. For example, one of the first points that should be considered is whether a guilty plea was voluntary and the defendant was aware of and understood all of his rights. If this is not reflected in the transcript, generally a new trial will be granted in a post conviction petition hearing. The Supreme Bench Rule for Baltimore City requires a court reporter to type up guilty pleas so a record exists for checking whether the defendant has been informed of his rights.

Mr. Ranier emphasized that a defendant is only entitled to a hearing on the first petition filed. It is, therefore, important that the petition have merit and substance. Only if it can be proved beyond doubt that great injustice has been committed will the court grant relief when the petition does not contain the fact.

The panel stressed the importance of being certain that whatever is being raised in a post conviction petition is not being raised on appeal, since an appeal will take at least six months before a decision is rendered and the trial court will postpone a hearing until the Court of Appeals has made its ruling. In most cases, a post conviction hearing will be scheduled in four to six weeks. It is also important to inform the petitioner of all possible issues that can be raised and that the burden is on the petitioner to prove the case for relief.

Finally, it was concluded that post conviction procedures provide a valuable right; the right to go into court and have the judge examine the whole proceeding to determine if there exists any irregularity or injustice. If the post conviction petition fails, the right to appeal remains.

All of the members of the panel urged law students to read "Defense of Criminal Cases — Post Conviction Procedure" published in the Continuing Legal Education Series. Students interested in criminal law and trial work were encouraged to participate in the internship programs available through the State's Attorney's Office and the Public Defenders Office. It was generally agreed that such internships offer the law student invaluable, practical, working experience.

EXAM CRAM

The exam schedule for the first semester has recently been published, much to the dismay of the second- and third-year students.

A close look at this schedule reveals that most exams for the courses traditionally taken by the second year students are, from the students' point of view, rather poorly planned.

Second year students will be subjected to writing as many as four exams in one week. The majority of these exams are for three credit courses. As though the pressures arising from having to take three major exams in one week were not enough, these exams were all placed in a seventy-two hour period at the end of the first week.

While many day students taking evening courses must write one exam until 9 or 10 p.m., they are in some cases expected to appear bright and early the following morning at 9:00 sharp for another exam. This, it seems, is not considered a conflict.

Upon questioning as to the high pressure tactics employed in formulating this schedule, Dean Buddeke replied, "We are preparing you for the bar exam, when the students will be examined in many more fields in the space of two days." Those students complaining to Dean Curtis about the evening-morning schedule were informed that they had no basis on which to voice a complaint.

While the students appreciate the fact that our faculty desires to prepare us well for the forthcoming bar exams, it is also their feeling that, in order to succeed in the bar exam, one must take the time provided in law school to master the subjects thoroughly. It is for this purpose that a reading period (now shortened) and a two week exam period are scheduled. In planning three exams in three days, this very purpose is being defeated.

Last year the exam schedule was issued at too late a date to propose and make any changes. This year it is the hope of many students that the flaws in the current schedule will be corrected.

Mandel Creates New Agency

(Continued from page 8)

Governor Mandel was quite emphatic in terming the energy problem in Maryland as an Emergency. He stated that there will be a shortage of oil in Maryland this winter. At present the shortage is estimated at 2% to 12%. It will be the duty of the Energy Policy Office to deal with this shortage.

Governor Mandel announced that the state is following certain guidelines to help conserve fuel and will distribute the guidelines to the public in hopes that it will also follow the guidelines. The Governor also indicated that he may ask for legislation to create emergency powers to deal with the shortage.

Career Info 73

A career day program, known as "CAREER INFO '73", is being organized by the Career Guidance and Employment Information Office, to be held on Wednesday and Thursday, November 7 and 8. The event will take place in the Student Study Lounge, Academic Center, and run from 1:00 to 8:00 PM both days in order to serve day and night students. Cooperating are the SBA and NSBA, with special mention of Bart Walker, Stu Robinson and John Geiss.

Some twenty organizations are expected to participate, comprising professional and trade associations and government departments -- city, state and federal. This is an employment information program, not a recruiting session. It envisions the opportunity for students to get broad-scale information that will assist in career determination and employer contacts. Applicable literature for future reference and planning will be available from the various participating organizations.

Among the expected participants, of special interest to law students are the Baltimore Bar Association, ABD Program Operations of Social Security, Maryland Department of Legislative Reference, the Governor's Commission on Law Enforcement and Administration of Justice, the Administrator of the Supreme Bench of Baltimore City, the U.S. District Court, the National Security Agency, VISTA Lawyers, the I.R.S., the Public Defender's Office and the F.B.I.

Interested students should plan to attend both days, in as much as the list of participants differs for each day.

Editor's Note: Special thanks are extended to Mr. Leimbach and Mrs. Hofstetter for their continuous interest in the law students and their efforts in organizing law related programs.

Nu Beta Epsilon

NU BETA EPSILON law fraternity will begin its 1973-74 breakfast-speaker program October 28 from 9:45 a.m. to 1:00 p.m. at Holiday Inn located at Reisterstown Road and the Baltimore Beltway. Paul R. Kramer, Deputy United States Attorney for the District of Maryland, will speak on Organized Crime: National and Local.

All fraternity members, alumni and professors should have received notice by mail. Anyone interested in joining the fraternity or attending the function should contact either Tom Atkins 727-7172 (Baltimore) or Bob O'Neill 652-4540 (washington). Guests are invited.

University Senate Organizes

by Tony Bruce

The University Senate is a policy consideration body for the whole University, making recommendations to the President for consideration and promulgation. It is composed of representatives of the administration, personnel, faculty and student body, the law student body has only one representative, who must represent both the evening and day students. This means that the representative must serve on a multitude of Senate committees, and that there is little chance for continuity of representation since the position must be alternated annually between the day and night students. Therefore, I recommend to the Presidents of the SBA and ESBA that they formally request the University Senate to provide for greater representation for the student body.

The Senate regularly meets once a month during the academic year. I am presently serving on the Ad Hoc Committee on State Affiliation which met with President Turner on September 25. I was particularly concerned about an article appearing in the September 6 edition of *The Evening Sun* concerning the separation of the Law School from the University and the City of Baltimore. The primary purpose for the committee is to squelch or confirm rumors as to the effect of state affiliation. I can assure you that I left the meeting confident that the Law School will remain an integral part of the University. I am less enthusiastic, however, about the likelihood of any of us everseeing a new building unless the ABA requires it for accredidation and *says* so. In no event will construction begin before state affiliation in 1975. One hopeful note of the consequences of state affiliation is that the present first year class should see reduced tuition in their third year on a par with that of the University of Maryland School of Law.

I would like to announce that Charles Shubow has been appointed by the Senate to serve on the Curriculum Committee. I hope that several students will be able to serve on the Student Affairs Committee if it ever is allowed to organize. The present delay is due to the fact that some Senators oppose a

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Congressman to Speak

On October 21, 1973, the SDK Fraternity sponsored their first Sunday Morning Breakfast. Congressman Paul Sarbanes of the Third Congressional District will give the main address.

All law students, their wives and friends were cordially invited to join the SDK Brothers for this most informative event. Breakfast was served at 9:00 a.m. at the Hilltop Inn on Security Boulevard, where Security Boulevard intersects with the Baltimore Beltway. The cost was $3.00 per person and tickets may be purchased at the door.

Another fun-filled evening, less academic in nature, took place at the SDK Fraternity House on 2717 St. Paul Stree, Baltimore, on Saturday, October 27, 1973 at 8:00 p.m.

The annual Halloween Party is an evening of wholesome, carefree fun, that promises to remain in your memory for some time. Costumes are a must. Beer, soft drinks and refreshments will be served, prizes for the best costumes in different categories will be awarded, and other exciting surprises will provide a laughter-filled evening - all for $5.00 per couple!

On October 5th, the fraternity members, their family and friends enjoyed an evening at the Limestone Dinner Theatre, eating heartily, then viewing intently the comedy, "I've Got My Man". A phenomenal turnout, having enjoyed a pleasant evening, could be heard joking with each other about the costumes they're planning to wear for the Halloween Party.

Students addressed on Purpose and Procedure

by Kathleen Sweeney

On Sunday evening, September 23, Judge Rita Davidson, Associate Judge of the Court of Special Appeals, addressed a group of students on the Purpose and procedure of the Maryland Court of Special Appeals.

Judge Davidson is originally from Brooklyn. The Judge's

initial contact with Maryland was through her attendance at Goucher College. She left Maryland to attend Yale Law School but later returned to practice after completing her education. Prior to becoming an Associate Judge of the Court of Special Appeals, Judge Davidson was Secretary of the Department of Employment and Social Services and a member of the Governor's Cabinet.

In her address, the Judge covered many aspects of the Court of Special Appeals. She explained that this court was created in order to lighten the case load of the Court of Appeals. However, because of the workload of the Court of Special Appeals, it will have to be expanded to include several new judges.

Each judge is expected to produce three opinions a week, fifty-two weeks a year. This is very difficult to accomplish considering that in the same week each judge must sit on the bench and prepare to hear several cases.

Each case before this Court is heard by three judges and the judges are not informed as to who will write the opinion until after the cases are heard. This is to insure that all cases will receive equal attention from each judge. The Chief Judge decides who will write each opinion and all the judges meet to decide which opinions will be published.

The Maryland Court of Appeals has exclusive appellate jurisdiction over all appeals which are not subject to the exclusive initial appellate jurisdiction of the Court of Special Appeals. The Court of Special Appeals has the exculsive initial appellate jurisdiction in juvenile, custody and adoption cases, post-conviction proceedings and criminal cases (where the sentence is other than death).

However the court of appeals may hear any case which they feel may be legally significant.

Judge Davidson also discussed whether judges should be elected or appointed. She felt there were drawbacks to both methods of selection. She stated that a judge would not have the time to campaign, yet political tampering with the courts is inherent to the appointment system.

Judge Davidson's talk is the first in a series of SBA-sponsored lectures. Offering this series to broaden the student's learning experience, the SBA cordially invites you to attend further discussions and lectures, as posted.

University Senate

(Continued from page 14)

student chairing the committee because of conflicts with study schedules. The problem was referred to committee for resolution. It is worth noting that this committee has not only failed to resolve the issue, but failed to meet, even though no student is serving on it.

The Senate Committee on Academic Affairs has met several times however. In connection with its duties of considering academic policies, discipline and procedures I submitted several conflicts and concerns for consideration. Since so many of them applied particularly to the Law School, the Chairman subsequently submitted them to the Law faculty. The Presidents of the SBA and the ESBA have been requested to inform the faculty of the student body's desires, pro or con. I have been informed that the Law faculty has already determined that the policy of the Law School shall be that examinations shall be identified only by the law students' social security numbers. Let's hope that the administration will now also proceed to provide the examination schedule as early as possible. There is no reason that the schedules of classes and examinations should not be available simultaneously. But then we know how early we received the class schedule.

The recommendations for consideration above were posted on the third floor of Charles Hall and I will continue to make information available there. In addition the University Senate has a bulletin board near the elevator on the first floor of Charles Hall.

I remain open to any suggestion concerning University policy or as to how I can more effectively represent the students.

Quiet Revolution

(Continued from page 4)

$3,500 representing five years' back-due payments, for a welfare client whose case worker had never told her that she was eligible for disability benefits. The University of Southern California's clinical program administered by Prof. Thomas K. Gilhool, requires students to put in full time for a semester; they assist in prosecutor's offices, legal service offices, prisons, and even law clinics serving the middle class, a new California institution.

In these and similar courses, the individual students' projects are often dissimilar, but in weekly classes participants discover and analyze the common threads of the legal process. Here law teachers dissect not the doctrines of the law, such as how property can be transferred in trust, but the activities of lawyers. Students practice drafting documents, examing witnesses, negotiating settlements, interviewing clients, and even lobbying for new legislation.

Faculty members try not only to improve the technical quality of the work, but to raise questions putting the lawyer's role in perspective. When should a lawyer urge his client to resort to litigation rather than compromise? When should a change in the law be attempted by a test case rather than by lobbying for legislative amendment? Is it ever proper for a lawyer first to determine the kind of test case he wants to bring - and only then seek out an appropriate client?

Most such issues of legal ethics arise in the context of advocacy; since they are rarely the subject of judicial opinions, they have not been an important aspect of the traditional law school curriculum. So while clincial teaching is usually defended for its exposure of students to the reality rather than merely the theory of the law, many clinical instructors are suggesting that its most important value is its capacity for making young lawyers recognize and ponder the moral dimensions of their daily practice. "What we see in Watergate is that some lawyers have never made personal a sense of professional responsibility," says Prof. Gilhool. "In even the smallest case the clinical student is confronted with ethical problems and is made to discuss them with his instructor and to frame a self-conscious judgment on his proper role before his lawyering habits become frozen."

Some Reservations

Despite widespread dissatisfaction with traditional legal curriculums among both teachers and law students, clinical education has its share of critics who condemn it in principle and skeptics who regard it as a passing fad. The doubters do not all come from the old guard. "The clinical program can confront the student with the service obligations of the legal profession. But if this is an objective of the program, service to poor clients may not be the best way to develop it," argues Edmund Kitch, a young University of Chicago law professor. "Poor clients are often inarticulate and to an unusual degree the burden falls to the lawyer to define what it is in fact the client needs. Then, too, there is pressure in a poverty office to sacrifice the standard of service to individuals in the interest of serving the largest number, or even to convert the service ethic from one of service to individuals to one of service to a class. Do students need more than common sense and common decency to deal with the problems of the lawyer role? If they lack these qualities, can exposure to real problems inculcate them?"

Despite these reservations, more students are being enrolled in clinical programs every year, and clinical courses are oversubscribed on most law compuses. Their phenomenal rate of growth in the last five years is largely attributable to the Council on Legal Education for Professional Responsibility (CLEPR), an institution funded by the Ford Foundation, which has paid for clinical programs at 90 law schools. By simultaneously funding so many clinics, CLEPR offered each school not only money but security against the charge of being radically different from the others. The CLEPR money was given would not be renewed, in the expectation that the schools themselves would subsequently pick up the tab. So far, every school whose grant has expired has decided nevertheless to continue clinical education.

The clinical programs are changing internally as well as increasing in number, and the latest wrinkle is the student practice of law. Up to now, most clinical students have performed almost all types of legal work, such as interviewing, drafting and counseling, but they have not argued in court or felt the ultimate responsibility to clients that results fron signing court papers. But since 1968, the number of states permitting supervised law students to handle their own cases in lower courts and administrative agencies has increased from 15 to 41. Both New York and New Jersey now allow third-year students in approved clinical programs to represent clients in court. Hofstra and New York University Law Schools have recently been granted permission to operate student practice clinics, and it may not be long before American law schools guarantee each one of their students his day in court.

Forum Enters National Competition

The FORUM staff is proud to announce that it has entered the FORUM newspaper into the national LSD newspaper competition for this coming year. The competition will be decided in the spring of 1974. The FORUM has come a long way from a mimeographed tabloid to a full and competitive law school newspaper. We have received tremendous response both from the students and faculty, and from members of the legal profession outside of the University body.

It is our aim to make the University of Baltimore FORUM one of the finest legal newspapers in the country. To this end we need your continued support and confidence. If anyone of the University community has comments, articles, or constructive criticism, please forward it to the FORUM office.

We would like to thank our advertisers for their financial support as we expand to reach areas throughout the State of Maryland.

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Freshmen

(Continued from page 11)

more than rudeness to my more pleasant approach. How am I supposed to feel, for example, when Ifind that only 25 people showed up to hear Judge Rita Davidson speak. These activities are meant to be for your benefit, all I can do is offer them to you.

Thank you for your patience while I blew off some steam. Please, if you want some sort of activity, come forward with a suggestion. But if I ask you to help, don't refuse. The difference between a success and a failure may be your unwillingness to follow through with your own idea.

John P. Geiss
President, ESBA

TO ALL CONCERNED:

I would like to express my gratitude for your thoughtfulness during my wife's illness. Your gifts and card made Laverne's stay at the hospital a more cheerful one.

Special thanks to Charles and Lisa Shubow for their kind efforts. Thank you.

Sincerely,
Daniel Jacobs

Consumers Floundering In Their Own Power

by John C. Axel

In today's world of support for the cause there are a number of strikingly practical causes which engulf nearly all although hardly anyone takes any real cognigence of the true import of these conflicts. Although there is clearly no intention to limit the existence of other valid contests I will cite but a few of the more noticeable ones.

Everyone is a consumer and many are businessmen in one aspect or another, most are tenants, quite a few depend heavily on the strength of the landlord, the labor force is pacted to the hilt and a startling few possess true management qualities. These groups are forced into regular struggles for their own survival, one trying to take an important strategical step in a certain direction with the expectation of making a more permanent impact. Perhaps if certain of these bodies realized the actual strength which they really possess, if they only exploited the resources at hand, the plight of today and for the not too distant future could be radically changed so as to effect a more positive trait in the evolution of mankind.

It is quite difficult to imagine how the consuming populace could be enlarged even when those who do their best to avoid being so categorized cannot do so in a manner deserving of full exclusion. How is it then that such a conglomerate today finds itself helplessly floundering in the market place? The answer can only lie in the inability of the group to comprehend its true power and the influence which such power can exert upon the business community. Unfortunately but understandably the group is too large, disorganized and diversified such that its very strength is also its dominant weakness. This result can be considered to be novel in that the economic structure forces this result and thrives on it and looming threateningly in the background is the ultimate demise of that structure because of it. To cite but a few revelant examples is helpful. American consumption of meat is excessively high and except for the formation of a common end, lead primarily but not exclusively by housewives, the price might yet be rising. But recent surveys show a decline in the price of meat by as much as thirty per cent. Yet the never ending struggle continues as dictated by the structure since milk is now up two cents and a rise in gas prices again is anticipated. The extent to which the consumer will submit and that to which business will bend is something worth keeping a close scrutiny upon.

Still another massive and yet amazingly powerless group in the housing battle is the tenant organization. This term is misleading to say the least since even these organizations are basicly helpless as they squander in never ending ideals such as educating the general community as to the need for tenant unions or tenant interest groups, to encourage their formation, to communicate tenant concerns to management groups and to seek needed remedies for problem situation, to create an open housing market, to maintain viable interracial communities, etc., etc., etc. This group possesses the strength to in fact remedy the inequities existent in today's mis-match between landlord and tenant. The landlords know this and fear only the organization and action of such a formidable group, a group which may ultimately force them to be reasonably fair in practice and not just expression. The might of the landlord lies in the apathy and ignorance of the tenant. The State of Maryland recently enacted a five per cent rent control law which remains effective until July 1st of next year. But, the tenant must take the initiative. He must attempt to compromise with the landlord and if no satisfactory arrangement can be made he must take the landlord to court. Few are willing to do this and for them the law is meaningless.

The landlords in the city today still reply upon the archaic laws such as those which do not require them to provide stoves or refrigerators, which allow them to evict a tenant within ten days if rent is not paid by a certain day of the week, which allow them to evict in thirty days for a violation of tenancy or if the tenant creates a nuisance, which allow them to evict in sixty days for no reason at all. The landlords in the richer suburban areas are allowed to require fifty dollar deposit on an application for an apartment and if he breaks the "agreement" a refund, less costs, is returned. If the prospective tenant finds another apartment which he is assured of and thus forced to break this application he is usually assured of losing his money. Tenants often allow landlords to get away with not providing a list of damages or items which are missing from the apartment when they move in and then being charged for these damages or missing items by having it directed from the security deposit. The tenant thus lives without certain items which he needs, perhaps a broiler pan to cook with, and then is charged when he moves out because there is no broiler pan in the apartment. On an individual basis these situations may be considered to be tolerable by some but on a full-scale level these situations are revolting and the need for correction drastic.

The final group, also massive but unable to meet its full potential, is the labor force. Admittedly this group has progressed a great deal in this country. But few would argue that the source of this nation's great strength are deserving of more. This will not be realized until a more harmonious growth is achieved between labor and management. The labor force must work to have its rights more fully defined as well as those of management. This could conceivably lead to mutual respect for one by the other. Unfair labor practices are not uncommon and the labor force must recognize these and assert itself in opposition to them. Many stores refuse to allow workers the right to self-organization. Those who attempt to protest their plight are systematically removed with the result being the status quo. Others are afraid to join in the assertion of correcting wrongs out of fear of personal attack. Fear is a very real weapon which is used mainly by management. Why not a reversal? Those members of the working class who have found it within themselves to organize, assert their rights, and choose their own representatives for collective bargaining have found some satisfaction through higher wages, better working conditions, and more flexible scheduling. In this respect the emphasis must be on a mutual level so that a cooperative element can be enjoyed by labor and management. The economic resources available can be more easily exploited in this way.

All of these tension situations are strategic to the individual and the group involved. They all concern our very existence and our ability to deal with them in a satisfactory manner will help to structure our society in a more tolerable fashion.

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